

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,073

ROBERT B. WEISS, *Et Al.*
Appellants

v.

FRANK M. PERPER, *Et Al.*
Appellees

No. 20,074

BERNARD MARGOLIUS, *Et Al.*
Appellants

v.

FRANK M. PERPER, *Et Al.*
Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals
for the District of Columbia Circuit

FILED JUL 6 1966

Nathan J. Paulson
CLERK

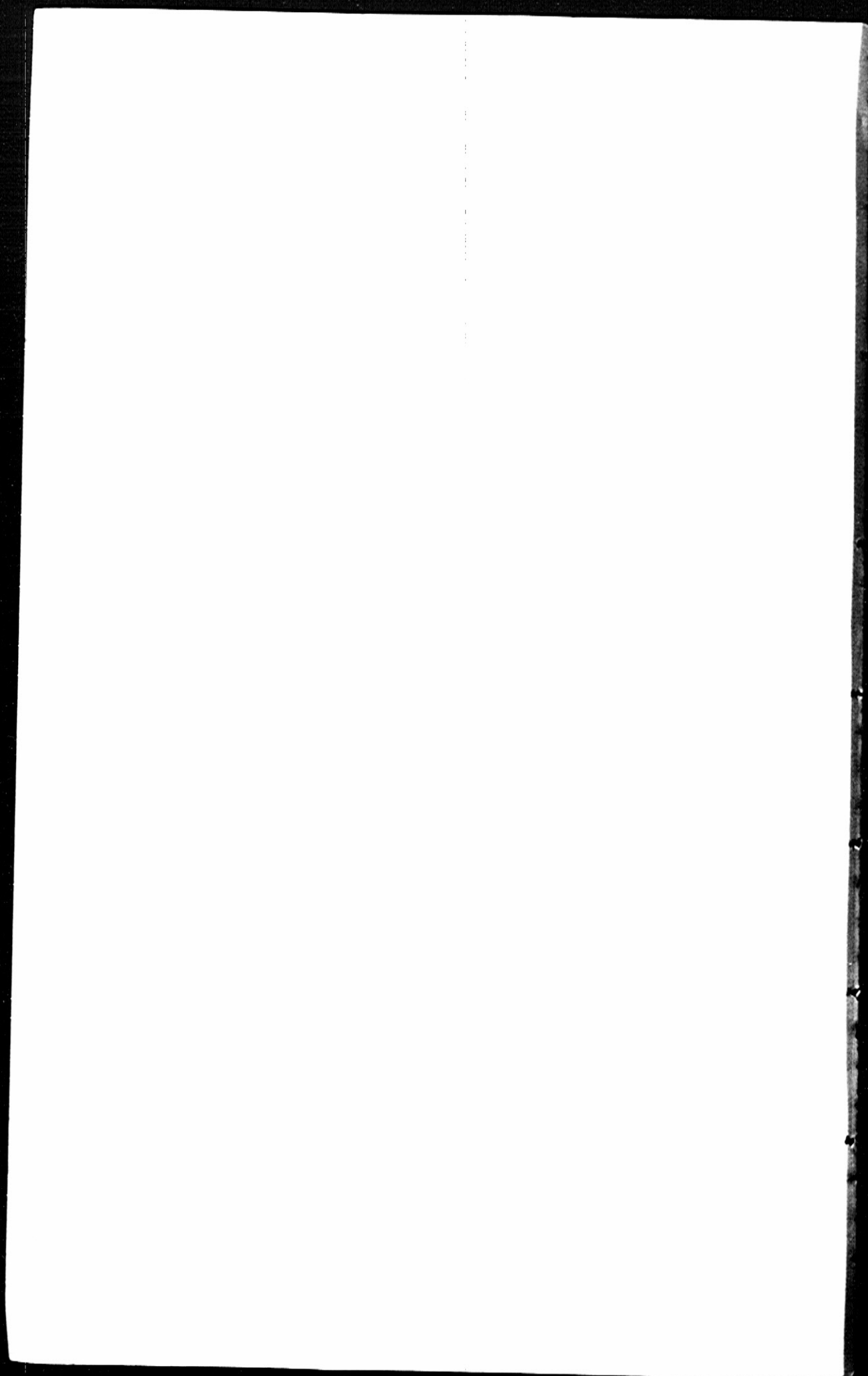


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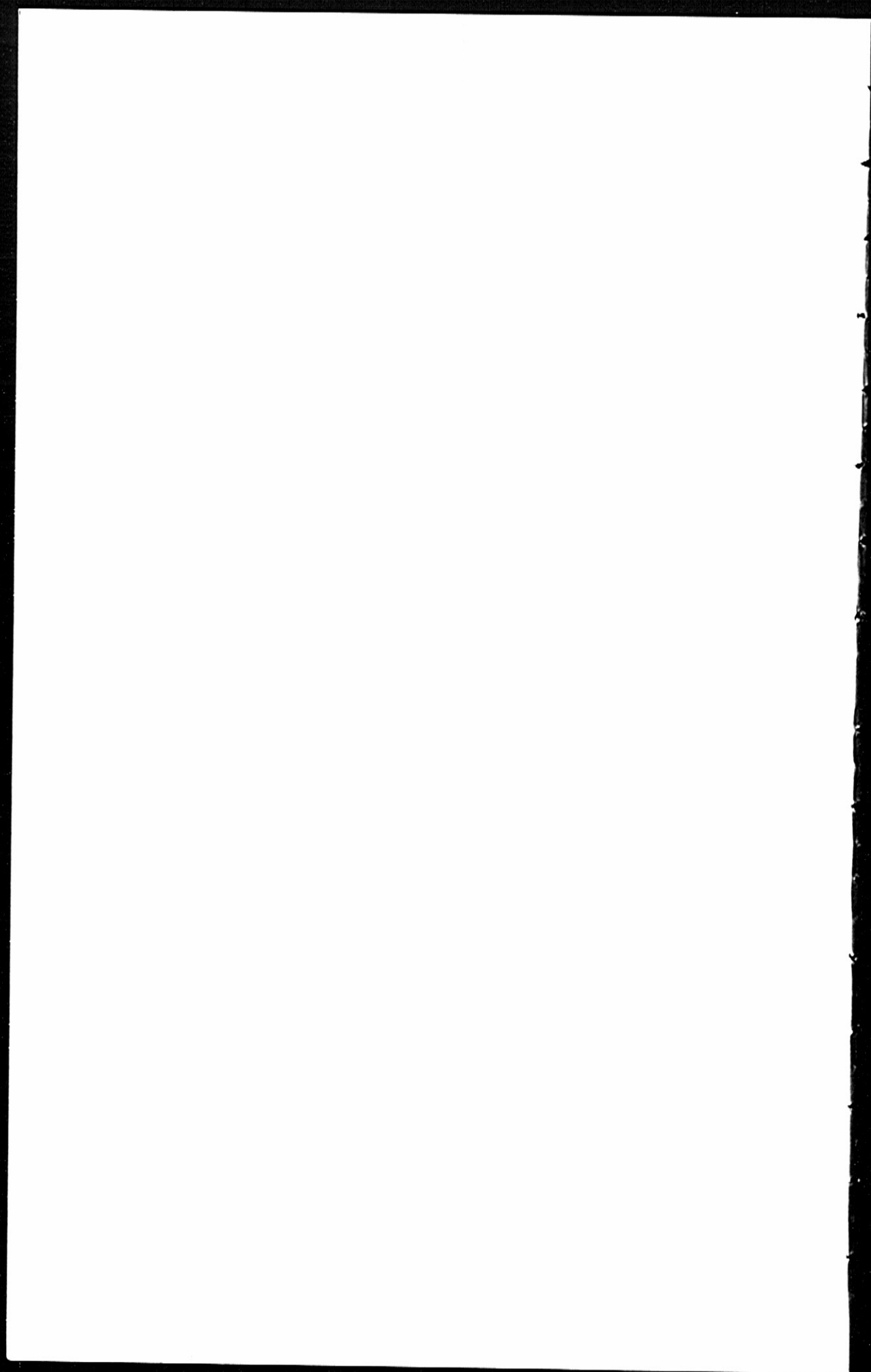
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IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Civil Division

ROBERT B. WEISS
1415 "K" Street, N.W., Washington, D.C.

JACOB M. BROIDIE
5000 Bates Road, N.E., Washington, D.C.

NORMAN FINKELSTEIN
1415 "K" Street, N.W., Washington, D.C.

MORRIS D. STOLAR
1415 "K" Street, N.W., Washington, D.C.

Plaintiffs,

v.

Civil Action
No. 3440-62

FRANK M. PERPER
4201 Cathedral Ave., N.W., Washington, D.C.

HENRIETTA PERPER
4201 Cathedral Ave., N.W., Washington, D.C.

HAROLD E. PERPER
Miami Beach, Florida

JULIAN SAVAGE
Universal Building, 1825 Connecticut Ave.,
N.W., Washington, D.C.

ALAN SAHM,
5319 Wisconsin Ave., N.W., Washington, D.C.

MARTIN PERPER
1300 "H" Street, N.W., Washington, D.C.

BERNARD MARGOLIUS
1000 Vermont Ave., N.W., Washington, D.C.

RALPH H. DECKELBAUM
1000 Vermont Ave., N.W., Washington, D.C.

Defendants.

[Filed Nov. 2, 1962]

**COMPLAINT TO ESTABLISH JOINT
ADVENTURE AND FOR DISCOVERY**

1. The Plaintiffs, Jacob M. Broidie and Norman Fink-
elstein, are residents of the District of Columbia and cit-
izens of the United States. The Plaintiffs, Robert B.
Weiss and Morris D. Stolar, are residents of the State
of Maryland and citizens of the United States.

2. The Defendants, Frank M. Perper and Henrietta
Perper, are residents of the District of Columbia and
citizens of the United States. The Defendant, Harold Per-
per, is a resident of the State of Florida and a citizen of
the United States. The Defendants, Julian Savage, Alan
Sahm and Martin Perper, are residents of the State of
Maryland and citizens of the United States. These De-
fendants are sued in their own right.

3. The Defendants, Bernard Margolius and Ralph H.
Deckelbaum, are named as necessary but nominal De-
fendants, and they have committed no wrongs and no re-
lief is sought against them by the Plaintiffs. Bernard
Margolius is a resident of the District of Columbia, and
Ralph H. Deckelbaum is a resident of the State of Mary-
land. They are citizens of the United States.

4. Prior to the year 1959 the Defendants, Frank M.
Perper and Bernard Margolius, were engaged in a joint
venture relating to building and operating motels. They
were not so engaged in the metropolitan area of the Dis-
trict of Columbia.

5. The Plaintiffs had located a site at Glebe Road and
Shirley Highway, in Arlington County, Virginia, which
they felt was very desirable upon which to build and op-
erate a motel. Being familiar with the knowledge and
skill of the nominal Defendant, Bernard Margolius, they
sought him as an associate and joint adventurer. He ad-
vised them that he felt duty bound to include the Defend-
ant, Frank M. Perper, in any motel deal, for the reason

that he and Frank Perper had been building and operating motels together for a long time.

6. As a result of these discussions the Plaintiffs and Bernard Margolius, and Frank M. Perper, entered into a joint venture agreement, under the terms of which the Plaintiffs were to have a joint fifty per cent interest, and Bernard Margolius and Frank M. Perper were to have a joint fifty per cent interest. After the joint venture had been formed, defendants Frank M. Perper and Bernard Margolius brought in Ralph H. Deckelbaum, Harold E. Perper and Julian Savage as participants in their share. From time to time, thereafter, Frank M. Perper would substitute other persons to hold his interest for reasons unknown to these Plaintiffs. The losses and profits were to be split in accordance with said interests. They were to obtain other sites in the metropolitan area and seek a franchise for the said metropolitan area from Holiday Inns of America, Inc. They were to build motels, on the site already found and on such other suitable sites as they might find. It was their understanding that they were to interest other persons as investors in each site separately as each site was developed, but the interest remaining after such investors' shares had been fixed would be divided as above set forth, fifty per cent to each of the groups.

7. To carry out the joint venture agreement the Plaintiffs, Robert Weiss and Jacob Broidie, on or about May, 1959 and at the suggestion and with the consent of Defendants, Frank M. Perper and Bernard Margolius, went to Memphis, Tennessee and there arranged with Holiday Inns of America, Inc. for a franchise for the site at Glebe Road and Shirley Highway, together with rights to develop the metropolitan area, except that under the franchise said Holiday Inns of America, Inc. would reserve the right to build and own motel sites. Said Holiday Inns of America has never done so, and this portion of the agreement is not involved herein.

8. Notwithstanding the agreement as aforesaid, the defendant Frank M. Perper, without the knowledge or consent of the Plaintiffs, arranged for said franchise to be taken in his name. Since the completion of the first motel said defendant Frank M. Perper has assumed and claimed to own the right to develop the metropolitan area, and he has obtained franchises in the name of Martin Perper. He, the said Frank M. Perper, has thus excluded these Plaintiffs from developing the metropolitan area, and the said Martin Perper is in fact and truth the "straw" for said Frank M. Perper.

9. Notwithstanding his duty as a joint adventurer, he, Frank M. Perper, has for his own benefit and the benefit of the other Defendants — except Bernard Margolius and Ralph H. Deckelbaum — built, begun to build or has arranged for motels under the franchise at the following sites:

- (a) 730 Monroe Street, N.E., Washington, D. C.;
- (b) U. S. Route #1, Berwyn Road and Baltimore Boulevard, College Park, Maryland;
- (c) Allentown Road and Maxwell Drive, Camp Springs, Maryland (under construction);
- (d) Rosslyn, Virginia (a proposed site);

and the following are reported but unconfirmed:

- (e) 17th Street and Rhode Island Ave., N.W., Washington, D.C.;
- (f) Dulles International Airport, Chantilly, Virginia;
- (g) Greenbelt Road and Washington-Baltimore Parkway, Maryland.

10. All of said motels belong in truth and in fact to the joint venture.

11. Plaintiffs are entitled under their agreement of joint venture to half of any interest held by the Defendants.

12. Frank M. Perper has taken his interest in these motels in the name of his wife, Henrietta Perper, or in the names of his sons, Harold Perper or Martin Perper, or in the name of his step-son-in-law, Alan Sahm. The interest of Julian Savage, Defendant herein, stems from his being one of the original joint adventurers.

WHEREFORE, Plaintiffs demand judgment as follows:

1. That the Defendants and each of them convey and transfer to these Plaintiffs a fifty per cent of their interest in all motels created by Defendants, or about to be created by Defendants, or operated under the franchise of Holiday Inns of America, Inc. in the metropolitan area by Defendants, except the original motel at Shirley Highway and Glebe Road, in Arlington County, Virginia, subject to such terms and conditions as this Court may find fair and just; or

2. That the joint venture, except Glebe Road and Shirley Highway, be dissolved and the properties be sold, and the proceeds distributed under order of this Court.

3. That the Defendants be required to account to the Plaintiffs for their profits under the terms of the joint venture.

4. That pending a final decision in this case a receiver be appointed, pendente lite, to hold the properties of the joint venture and operate the same under order of this Court.

5. That the franchise agreement be declared to belong to the joint venture, and that the franchises are held on behalf of the joint venture, and the Defendants be enjoined pendente lite and permanently from using said franchises for their use and benefit only.

Robert B. Weiss

Jacob M. Broidie

Norman Finkelstein

Morris D. Stolar

[Notarial Certificate, ____ Oct. 1962]

[Filed Nov. 21, 1962]

**ANSWER TO COMPLAINT OF DEFENDANTS
FRANK M. PERPER, HENRIETTE PERPER,
JULIAN SAVAGE AND ALAN SAHM.**

First Defense: The defendants, Frank M. Perper, Henriette (erroneously designated as Henrietta) Perper, Julian Savage and Alan Sahm, admit the allegations contained in paragraph 1 of the complaint; the defendant Henriette Perper admits she is a citizen of the United States and resident of the District of Columbia; the defendant Frank M. Perper admits he is a citizen of the United States and a resident of the District of Columbia at the present time although his legal residence is in the state of Florida; the defendant Julian Savage admits he is a citizen of the United States and a resident of the state of Maryland; the defendant Alan Sahm admits that he is a citizen of the United States and a resident of the state of Maryland; these defendants admit that the defendant Harold Perper is a citizen of the United States and a resident of the state of Florida; these defendants admit that the defendant Martin Perper is a citizen of the United States and a resident of the District of Columbia; these defendants are not required to answer paragraph 3 of the complaint since the allegations therein do not pertain to them; these defendants deny that the defendant Frank M. Perper and Bernard Margolius were, prior to the year 1959, engaged in a joint venture in building and operating motels; further answering paragraph 4 of the complaint, the defendant Frank M. Perper asserts that there were occasions when he and the de-

fendant, Bernard Margolius entered into specific contracts pertaining to the building of a certain motel or motels, but said contracts were entered into with respect to each of said motels and only pertained thereto; that these motels did not involve the metropolitan area of the District of Columbia; that defendants are without information or belief sufficient to either admit or deny the allegations contained in paragraph 5; these defendants deny each and every allegation contained in paragraph 6 of the complaint; these defendants admit that in May of 1959, the plaintiffs Robert B. Weiss and Jacob M. Broidie went to Memphis, Tennessee to the office of the Holiday Inns of America but they deny each and every other allegation contained in paragraph 7, insofar as they pertain to the defendant Frank M. Perper; these defendants deny the existence of any joint venture agreement with the plaintiffs and deny that the franchise for the motel at Glebe Road and Shirley Highway was taken in the name of Frank M. Perper without the knowledge and consent of plaintiffs; the defendant Frank M. Perper admits that he has claimed the right to develop the metropolitan Washington area; the defendants deny each and every other allegation contained in paragraph 8; the defendant Frank M. Perper admits that he has an interest in a motel which has been constructed at 730 Monroe Street, N.E., Washington, D.C.; he admits that he has an interest in a proposed site for a motel in Rosslyn, Virginia, for a proposed site at 17th and Rhode Island Avenue, N.W., Washington, D.C., and for a proposed site at Dulles International Airport, Loudoun County, Virginia, but he denies each and every other allegation contained in paragraph 9; these defendants deny each and every allegation contained in paragraph 10 and 11; these defendants deny each and every allegation contained in paragraph 12, and all other allegations contained in the complaint.

Second Defense: Further answering the complaint, these defendants assert that no joint venture agreement was ever entered into between the plaintiffs and the de-

fendant, Frank M. Perper or between the plaintiffs, the defendant Frank M. Perper, and anyone else. They assert that the plaintiffs and a number of other persons including five of the named defendants here did enter into a certain joint venture agreement as of the 29th of October, 1959, pertaining to a motel which was constructed at Glebe Road and Shirley Highway in Arlington, Virginia, said joint venture agreement being attached hereto and prayed to be read as a part hereof.

Third Defense: Further answering the complaint, these defendants assert that no joint venture agreement was ever entered into by and between these plaintiffs and the defendant, Frank M. Perper. In the alternative, these defendants assert that this complaint fails to state a claim upon which relief can be granted because the agreement alleged to have been entered into between plaintiffs and the defendant Frank M. Perper was not in writing and therefore was barred by the provisions contained in Title 12, Sections 302 and 303 of the District of Columbia Code.

Fourth Defense: Further answering the complaint, these defendants assert that the plaintiffs cannot maintain this action because of the expiration of the statute of limitations and their laches.

Fifth Defense: Further answering the complaint these defendants assert that there are numerous other persons holding ownership in certain of the sites referred to in paragraph 9 of the complaint; that these persons are necessary and indispensable parties, and that this action cannot therefore proceed without their joinder.

Sixth Defense: The complaint fails to state a claim upon which relief can be granted.

GALIHHER & STEWART

By Richard W. Galiher
Thomas Schattenfield
David M. Osnos

Attorneys for above named
Defendants

[Copy of Answer to Complaint mailed 21 Nov. 1962 to
Friedlander & Friedlander.]

[Filed Apr. 15, 1963]

**ANSWER TO COMPLAINT ON BEHALF
OF HAROLD E. PERPER**

FIRST DEFENSE: The defendant, Harold E. Perper, admits the allegations contained in paragraph 1 of the complaint; he admits the allegations contained in paragraph 2 except that he asserts that the defendant, Frank M. Perper, is a resident of the District of Columbia at the present time with a legal residence in the state of Florida, and the defendant Martin Perper is likewise a resident of the District of Columbia; this defendant is not required to answer paragraph 3 of the complaint since the allegations therein do not pertain to him; he denies that the defendant Frank M. Perper and Bernard Margoliuss were, prior to the year 1959, engaged in a joint venture in building and operating motels; he is without sufficient knowledge or belief to either admit or deny the allegations contained in paragraph 5; he denies the allegations contained in paragraph 6; he is informed that the plaintiffs Weiss and Broidie in May of 1959 went to Memphis, Tennessee to the office of Holiday Inns of America but he denies each and every other allegation contained in paragraph 7; he denies the existence of any

joint venture agreement and denies that the franchise for the Glebe Road and Shirley Highway, Arlington, Virginia was taken in the name of Frank M. Perper without the knowledge and consent of plaintiffs. He is informed that the defendant, Frank M. Perper, has an interest in a motel which has been constructed at 730 Monroe Street, N.E., Washington D.C.; and that the said Frank M. Perper has an interest in a proposed site for a motel in Rosslyn, Virginia, for a proposed site at 17th and Rhode Island Avenue, N.W. and for a proposed site at Dulles International Airport, Loudoun County, Virginia; he denies each and every other allegation contained in paragraphs 10, 11 and 12 of the complaint; he denies each and every other allegation contained in the complaint.

SECOND DEFENSE: Further answering the complaint this defendant asserts that no joint venture agreement was ever entered into between the plaintiffs and defendant, Frank M. Perper, or between the plaintiffs and Frank M. Perper and anyone else. He asserts that the plaintiffs and a number of other persons including himself and other named defendants here did enter into a joint venture agreement as of October 29, 1959, pertaining to a motel which was constructed at Glebe Road and Shirley Highway, in Arlington, Virginia.

THIRD DEFENSE: Further answering the complaint, this defendant asserts that this complaint fails to state a claim upon which relief can be granted because the agreement alleged to have been entered into by the plaintiff and Frank M. Perper was not in writing and therefore barred by the provisions of Title 12, Sections 301 and 302 of the District of Columbia Code.

FOURTH DEFENSE: Further answering the complaint this defendant asserts that the plaintiffs cannot maintain this action because of the expiration of the statute of limitations and their laches.

FIFTH DEFENSE: Further answering the complaint this defendant asserts that there are numerous other

persons holding ownership in certain of the sites referred to in paragraph 9 of the complaint; that these persons are necessary and indispensable parties, and that this action cannot therefore proceed without their joinder.

SIXTH DEFENSE: The complaint fails to state a claim upon which relief can be granted.

GALIHHER & STEWART

By Richard W. Galiher

Attorney for Defendant Harold E. Perper

[Copy of Answer to Complaint mailed ____ Apr. 1963 to Friedlander & Friedlander.]

[Filed Apr. 15, 1963]

**ANSWER TO COMPLAINT OF
DEFENDANT MARTIN PERPER**

FIRST DEFENSE

The Defendant, Martin Perper, is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 1 of the Complaint; this Defendant denies that he is a resident of the State of Maryland and asserts that he is a resident of the District of Columbia; he further asserts that the Defendant Frank M. Perper is a resident of the District of Columbia at the present time, although his legal residence is in the State of Florida; all other allegations contained in Paragraph 2 of the Complaint are admitted by this Defendant; this Defendant is not required to answer Paragraph 3 of the Complaint since the allegations therein contained do not pertain to him; this Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraphs 4, 5 and 6; this Defendant asserts that he has never held

for the Defendant Frank M. Perper any interest in any joint Venture but is without sufficient knowledge to either admit or deny the other allegations of Paragraph 7 of the Complaint; this Defendant is without sufficient knowledge to either admit or deny whether the Holiday Inn franchise for the site at Glebe Road and Shirley Highway was taken in the Defendant Frank M. Perper's name, but he denies each and every other allegation contained in Paragraph 8 of the Complaint; he asserts that he has an interest in motels which have been constructed at 730 Monroe Street, N. E., Washington, D. C. and U. S. Route #1, Berwyn Road and Baltimore Boulevard, College Park Maryland, and that he has an interest in the motel under construction at Allentown Road and Maxwell Drive, Camp Springs, Maryland, and the proposed site at Greenbelt Road and Washington-Baltimore Parkway, Maryland; this Defendant further asserts that none of the other Defendants named herein have any interest in the said motel located at U.S. Route #1, Berwyn Road and Baltimore Boulevard, College Park, Maryland, nor in the motel under construction at Allentown Road and Maxwell Drive, Camp Springs, Maryland, nor in the proposed motel site at Greenbelt Road and Washington-Baltimore Parkway, Maryland; he denies each and every allegation contained Paragraphs 10 and 11 of the Complaint; this Defendant is without sufficient knowledge to either admit or deny whether the Defendant Frank M. Perper has taken any interest in any motel in the name of his wife, Henrietta Perper or in the name of his son, Harold Perper, or in the name of his step-son-in-law, Alan Sahm, or whether the interest of Julian Savage stems from his being one of the original joint adventurers, but he denies that the Defendant Frank M. Perper has taken any interest in any motel in the name of this Defendant.

SECOND DEFENSE

In further answering the Complaint, this Defendant asserts that he is not now and never has been a "straw" for Frank M. Perper or any of the other Defendants

named in this action with respect to any interest in any motel, motel franchise, or motel site, nor has the Defendant Frank M. Perper or any other Defendant held any interest in any motel, motel franchise, or motel site for his use or benefit.

THIRD DEFENSE

This Defendant asserts that this Complaint fails to state a claim upon which relief can be granted, due to the fact that the agreement alleged to have been entered into between Plaintiffs and the Defendant Frank M. Perper was not in writing and therefore was barred by the provisions contained in Title 12, Sections 302 and 303 of the D.C. Code.

FOURTH DEFENSE

Further answering the Complaint, this Defendant asserts that the Plaintiffs cannot maintain this action because of the expiration of the Statute of Limitations and their laches.

FIFTH DEFENSE

Further answering the Complaint, this Defendant asserts that there are numerous other persons holding ownership interests in certain of the sites referred to in Paragraph 9 of the Complaint; that these persons are necessary and indispensable parties, and that this action cannot therefore proceed without their joinder.

SIXTH DEFENSE

The Complaint fails to state a cause of action upon which relief may be granted.

/s/ Earl M. Foreman

/s/ Irwin H. Liptz

Attorneys for Defendant Martin Perper

[Certificate of Service, 15 Apr. 1963]

[Filed Nov. 18, 1963]

**ANSWER OF DEFENDANTS BERNARD MARGOLIUS
AND RALPH H. DECKELBAUM AND THEIR CROSS
CLAIM AGAINST THE DEFENDANTS FRANK M. PER-
PER, HENRIETTE PERPER, HAROLD E. PERPER,
JULIAN SAVAGE, ALAN SAHM, AND MARTIN PERPER**

1-3. These defendants admit the allegations of paragraph 1 to 3 of the complaint but say that since the filing of the complaint herein, the defendant Bernard Margolius has become and still is a resident of Montgomery County Maryland.

4. They say that prior to and during the year 1959 the defendants Frank M. Perper and Bernard Margolius were engaged in joint ventures relating to building and operating motels, particularly Holiday Inn franchise motels, but that they were not so engaged in the metropolitan area of the District of Columbia until the time hereinafter shown.

5. They admit the allegations of paragraph 5 of the complaint.

6. They say that after the joint venture agreement referred to in paragraph 6 of the complaint was entered into, the defendants Frank M. Perper and Bernard Margolius agreed to give the defendant Julian Savage ten per cent of their joint fifty per cent interest, and the defendant Frank M. Perper placed his remaining interest in the names of his son, the defendant Harold E. Perper, and the defendant Henriette Perper's son and nominee, the defendant Alan Sahm. The defendant Bernard Margolius arranged to transfer one-fifth of his remaining interest to the defendant Ralph H. Deckelbaum. The object and purpose of the said joint venture was to develop and build a Holiday Inn franchise motel on the site referred to in paragraph 5 of the complaint and to seek

other sites upon which to build Holiday Inn Motels in the metropolitan area of Washington, District of Columbia, it being the intent, object and purpose of the said joint venture ultimately to develop the entire metropolitan area of Washington, District of Columbia, with Holiday Inn Motels.

7. In furtherance of the objects and purposes of the said joint venture, the plaintiffs Robert Weiss and Jacob Broidie on or about May, 1959, went to Memphis, Tennessee, and there arranged with Holiday Inns of America, Inc., for a franchise for the site at Glebe Road and Shirley Highway referred to in paragraph 5 of the complaint. Upon information and belief they further say the defendants Robert Weiss and Jacob Broidie, on behalf of said joint venture, arranged with Holiday Inns of America, Inc., for the right to develop the metropolitan area of Washington, District of Columbia, with Holiday Inn Motels, except that Holiday Inns of America, Inc., reserved the right to build and own Holiday Inn Motels in the same area. They are further informed and believe and therefore say that upon the basis and as a result of the franchise issued by Holiday Inns of America, Inc., for a Holiday Inn Motel on the site at Glebe Road and Shirley Highway referred to in paragraph 5 of the complaint, Holiday Inns of America, Inc., awarded to the defendant Frank M. Perper a commitment which earmarked the metropolitan area of Washington, District of Columbia, for development by him with Holiday Inn Motels, which commitment the defendant Frank M. Perper has held and still holds for the use and benefit of the said joint venture referred to in paragraph 6 of the complaint.

8. These defendants say that since the completion of the Holiday Inn Motel on the site at Glebe Road and Shirley Highway referred to in paragraph 5 of the complaint, the defendant Frank M. Perper has assumed and claimed, and still assumes and claims to own in his own right the right to develop the metropolitan area of Washington, District of Columbia, with Holiday Inn Motels, to the ex-

clusion of the plaintiffs and these defendants and, to the injury and damage of the plaintiffs and these defendants, he has arranged for franchises for Holiday Inn Motels in the metropolitan area of Washington, District of Columbia, to be granted to his son, the defendant Martin Perper, without consideration to him or the plaintiffs or these two defendants, for all of whom the said commitment was acquired and by all of whom said commitment is equitably owned.

9. These defendants say that the defendant Frank M. Perper has obtained or arranged for the granting of Holiday Inn Motel franchises on numerous sites in the metropolitan area of Washington, District of Columbia, the exact locations of which are unknown to these defendants, except that a Holiday Inn Motel was opened in 1962 in the vicinity of Catholic University in Washington, District of Columbia, and in the same year at College Park, Maryland, another Holiday Inn Motel was opened, and in 1963 in Prince George's County, Maryland, at a location in the vicinity of Andrews Air Force Base, another Holiday Inn Motel was opened, and, in addition to the foregoing, there is a Holiday Inn Motel under construction at the intersection of 17th and Rhode Island Avenue, N.W., Washington, District of Columbia. These defendants have been informed and believe and therefore say that additional Holiday Inn Motels have been planned by or through the defendant Frank M. Perper or the defendant Martin Perper at other locations in the metropolitan area of Washington, District of Columbia.

10. These defendants admit that the interests of the defendants, or any of them, or their nominees or persons claiming through them, in Holiday Inn Motels in the metropolitan area of Washington, District of Columbia, the franchises for which were obtained or arranged for by the defendants, or any of them, or their nominees, or persons claiming through them, and which franchises resulted from the original Holiday Inn Motel franchise in the metropolitan area of Washington, District of Colum-

bia; namely, the franchise for the Holiday Inn Motel at Glebe Road and Shirley Highway referred to in paragraph 5 of the complaint, and from the commitment of Holiday Inns of America, Inc., to the defendant Frank M. Perper referred to in paragraph 7 of this answer, are in equity the property of the joint venture composed of the plaintiffs, these two defendants and the other defendants referred to in paragraph 6 of this answer.

11-12. These defendants are informed and believe and therefore say that the allegations of paragraphs 11 and 12 do not require an answer by these defendants, or either of them.

CROSS CLAIM

1. This court has jurisdiction by reason of the fact that the amount in controversy exceeds the sum of Ten Thousand (\$10,000) Dollars.

2. The defendants Bernard Margolius and Ralph H. Deckelbaum hereby adopt the allegations of paragraphs 1, 2 and 3 of the complaint filed herein and by reference make the same a part of this cross claim, except the allegation that Bernard Margolius is a resident of the District of Columbia, and with respect thereto say that since the filing of the original complaint herein said defendant has become and still is a resident of Montgomery County, Maryland.

3. Prior to and during the year 1959, the defendants Frank M. Perper and Bernard Margolius were engaged in joint ventures relating to building and operating motels. These motels included Holiday Inn franchise motels in various states of the United States. They were not so engaged in the metropolitan area of Washington, District of Columbia, until the time hereinafter more fully shown.

4. In 1959 the plaintiffs had located a site at Glebe Road and Shirley Highway in Arlington County, Virginia, which they felt was very desirable upon which to build and

operate a motel. They sought defendant Bernard Margolius as an associate and joint venturer. The defendant Bernard Margolius advised the plaintiffs that he felt duty bound to include the defendant Frank M. Perper in any motel deal, for the reason that he and the defendant Frank M. Perper had been building and operating motels together for a long time.

5. As a result, the plaintiffs and the defendants Bernard Margolius and Frank M. Perper entered into a joint venture agreement, under the terms of which the plaintiffs were to have a joint fifty per cent interest and the defendants Bernard Margolius and Frank M. Perper were to have a joint fifty per cent interest. After the joint venture agreement was entered into, the defendants Frank M. Perper and Bernard Margolius agreed to give the defendant Julian Savage ten per cent of their joint fifty per cent interest, and the defendant Frank M. Perper placed his remaining interest in the names of his son, the defendant Harold E. Perper, and the defendant Henriette Perper's son and nominee, the defendant Alan Sahm. The defendant Bernard Margolius arranged to transfer one-fifth of his remaining interest to the defendant Ralph H. Deckelbaum. The object and purpose of the said joint venture with the plaintiffs was to develop and build a Holiday Inn franchise motel on the site referred to in paragraph 5 of the complaint and in addition to seek other sites upon which to build Holiday Inn Motels in the metropolitan area of Washington, District of Columbia, it being the intent, object and purpose of the said joint venture ultimately to develop the entire metropolitan area of Washington, District of Columbia, with Holiday Inns. It was understood and agreed between the plaintiffs and the defendants Bernard Margolius and Frank M. Perper as a part of their said joint venture agreement that the said joint venturers were to interest other persons as investors in each site separately as each site was developed, but the interest remaining after such investors shares had been fixed would be divided as hereinbefore alleged;

that is to say, the plaintiffs were to have a joint fifty per cent interest and the defendants Bernard Margolius and Frank M. Perper were to have a joint fifty per cent interest.

6. In furtherance of the objects and purposes of said joint venture, arrangements were made with Holiday Inns of America, Inc. for a franchise for a Holiday Inn on the site of Glebe Road and Shirley Highway, Arlington County, Virginia. Defendant Frank M. Perper arranged with Holiday Inns of America, Inc. for said franchise to be issued in his name and the said franchise was originally so issued. These defendants have been advised upon such information and belief that the franchise so originally issued to defendant Frank M. Perper designated as its area Washington, District of Columbia and Arlington, Virginia, which area included the site at Glebe Road and Shirley Highway. Thereafter, without the knowledge or consent of these two defendants, said franchise was amended and changed by striking therefrom the words "Washington, D.C. and Arlington, Virginia," and limiting the franchise to the specific site "Intersection of Shirley Highway and Glebe Road, Arlington, Va."

7. Since the completion of the Holiday Inn Motel on the site at Glebe Road and Shirley Highway, Arlington, Virginia, the defendant Frank M. Perper has claimed and assumed to own in his own right the right to develop the metropolitan area of Washington, District of Columbia, with Holiday Inn franchise motels to the exclusion of these two defendants and he has arranged for Holiday Inn Motel franchises to be granted and issued by Holiday Inns of America, Inc., to himself and to his son, the defendant Martin Perper, to the damage and injury of these two defendants. These defendants say that the granting and issuing of such franchises, and each of them, by Holiday Inns of America, Inc., resulted from the fact that the plaintiffs, these defendants and defendant Frank Perper, developed the original Holiday Inn in the metropolitan area of Washington, District of Columbia, for which a

Holiday Inn franchise was issued originally in the name of the defendant Frank M. Perper. The area was committed to defendant Frank M. Perper, which commitment was by agreement with the plaintiffs and these two defendants to be for the benefit of all of them. These defendants further say that any and all Holiday Inn franchises which the defendant Frank M. Perper was entitled to have issued as a result of the said original franchise having been issued in his name; including those issued to defendant Martin Perper, are in equity the property of the plaintiffs and the defendants who were parties to the original venture, and the franchises so held by defendant Frank M. Perper and Martin Perper are held in trust for the said joint venture.

8. These defendants hereby adopt each and all of the allegations of paragraphs 9 and 10 of their foregoing answer and by reference incorporate and make the same a part of this cross claim the same as though they were fully alleged herein.

WHEREFORE, these defendants demand judgment for relief as follows:

1. That the commitment referred to in paragraph 7 of this cross claim which is held in the name of the defendant Frank M. Perper be adjudged to be held by him for the use and benefit of the joint venture composed of the plaintiffs, these two defendants and the remaining defendants.

2. That the franchises for Holiday Inn Motels in the metropolitan area of Washington, District of Columbia, held in the names of defendants, or any of them, or their nominees, or persons claiming through them, be adjudged to be held for the use and benefit of the joint venture composed of the plaintiffs, these two defendants and the remaining defendants.

3. That the defendants, other than these two defendants, be ordered and directed to set over, assign, trans-

fer and convey to the joint venture composed of the plaintiffs, these two defendants and the remaining defendants, all of their, and each of their, rights, title and interest in and to Holiday Inn Motels in the metropolitan area of Washington, District of Columbia, except the Holiday Inn Motel at Glebe Road and Shirley Highway, Arlington County, Virginia.

4. That the defendants, and each of them, be required to account to these two defendants for any and all their profits resulting from the joint venture composed of the plaintiffs, these two defendants and the said remaining defendants.

5. And for such other and further relief as to the Court may seem meet and proper, the exigencies of the case may require and the evidence may show these two defendants to be entitled.

HILLAND, MACK & HOGAN

By Arthur J. Hilland

[Certificate of Service, ___ Nov. 1963]

[Filed Dec. 5, 1963]

**ANSWER OF DEFENDANT, MARTIN H.
PERPER, TO CROSS-CLAIM BY BERNARD
MARGOLIUS AND RALPH H. DECKELBAUM**

FIRST DEFENSE

The Defendant, Martin H. Perper, admits the allegations contained in ¶1 of the Cross-Claim; this Defendant is without sufficient knowledge to either admit or deny the allegations contained in ¶1 of the Complaint as referred to in the Cross-Claim; this Defendant denies that he is a resident of the State of Maryland and asserts that he is a resident of the District of Columbia; this Defendant

further asserts that the Defendant, Frank M. Perper, is a resident of the District of Columbia at the present time, although his legal residence is in the State of Florida; this Defendant admits all other allegations contained in ¶2 of the Complaint as referred to in the Cross-Claim; this Defendant is not required to answer ¶3 of the Complaint as referred to in the Cross-Claim and is without sufficient knowledge to either admit or deny the other allegations contained in ¶2 of the Cross-Claim; this Defendant is without sufficient knowledge to either admit or deny the allegations contained in ¶s 3, 4, 5, and 6 of the Cross-Claim; that Defendant denies each and every allegation contained in ¶7 of the Cross-Claim; this Defendant admits that Holiday Inn motels were opened in 1962 in the vicinity of Catholic University, Washington, District of Columbia, and at College Park, Maryland, and in 1963, in the vicinity of Andrews Air Force Base, Prince George's County, Maryland, and that there is a Holiday Inn motel presently under construction at the intersection of Seventeenth Street and Rhode Island Avenue, Northwest, in the District of Columbia, and that other Holiday Inn motels are planned in the metropolitan area of the District of Columbia by this Defendant; this Defendant is without sufficient knowledge to either admit or deny whether additional Holiday Inn motels are planned in the metropolitan area of the District of Columbia by the Defendant, Frank M. Perper; this Defendant denies each and every other allegation contained in ¶9 of the Cross-Claimants' Answer as referred to in ¶8 of the Cross-Claim, and asserts that the Defendant, Frank M. Perper, has no interest whatsoever in the Holiday Inn motels located in the vicinity of Andrews Air Force Base, Prince George's County, Maryland and at College Park, Maryland; this Defendant denies the allegations contained in ¶10 of the Answer of Cross-Claimants as referred to in ¶8 of the Cross-Claim as it applies to this Defendant.

SECOND DEFENSE

In further answering the Cross-Claim, this Defendant asserts that he is not now and never has been a nominee for the Defendant, Frank M. Perper, for any motel located in the metropolitan area of the District of Columbia, nor has he held any interest in any motel, motel franchise or motel site for the Defendant, Frank M. Perper, in the Washington metropolitan area. This Defendant further asserts that the Defendant, Frank M. Perper, has never arranged for any Holiday Inn Motel Franchise to be granted and issued by Holiday Inns of America, Inc., to this Defendant, and that the issuance of such franchises by Holiday Inns of America, Inc., to this Defendant was as a result of this Defendant's efforts, nor has the Defendant, Frank M. Perper, or any other Defendant, held any interest in any motel, motel franchise, or motel site for this Defendant's use or benefit.

THIRD DEFENSE

This Defendant asserts that this Cross-Claim fails to state a cause of action upon which relief can be granted due to the fact that the agreement alleged to have been entered into between the Plaintiffs and the Defendant, Frank M. Perper, was not in writing and was, therefore, barred by the provisions contained in Title 12, §302 and §303 of the District of Columbia Code.

FOURTH DEFENSE

Further answering the Cross-Claim, this Defendant asserts that Cross-Claimants cannot maintain this action because of the expiration of the Statute of Limitations and their laches.

FIFTH DEFENSE

Further answering the Cross-Claim, this Defendant asserts that there are numerous other persons holding ownership interests in certain of the sites referred to in

the Cross-Claim and that these persons are necessary and indispensable parties and that this action cannot, therefore, proceed without their joinder.

SIXTH DEFENSE

The Cross-Claim fails to state a cause of action upon which relief can be granted.

Earl M. Foreman

Irwin H. Liptz, Attorney for
Defendant, Martin H. Perper

[Certificate of Service, 5 Dec. 1963]

[Filed Dec. 17, 1963]

**ANSWER OF DEFENDANTS, FRANK M.
PERPER, HENRIETTE PERPER, HAROLD
PERPER, JULIAN SAVAGE, AND ALAN
SAHM, TO CROSS-CLAIM**

FIRST DEFENSE

The above defendants admit that the amount of this Cross-claim is in excess of \$10,000.00; the defendant Henriette Perper admits she is a citizen of the United States and a resident of the District of Columbia; the defendant Frank M. Perper admits he is a citizen of the United States and a resident of the District of Columbia at the present time although his legal residence is in the State of Florida; the defendant Julian Savage admits he is a citizen of the United States and a resident of the State of Maryland; the defendant Alan Sahm admits that he is a citizen of the United States and a resident of the State of Maryland; these defendants admit that the defendant Harold Perper is a citizen of the United States and a resident of the State of Florida; these defendants admit that the defendant Martin Perper is a citizen of the United States and a resident of the District of Colum-

bia; the defendant Frank M. Perper asserts that there were occasions when he and the defendant Bernard Margolius entered into specific contracts pertaining to the building of certain motels in various parts of the United States: that these motels did not involve the metropolitan area of the District of Columbia; that defendants are without information or belief sufficient to either admit or deny the allegations contained in paragraph four; these defendants admit that a joint venture agreement was entered into with respect to a motel to be constructed at Glebe Road and Shirley Highway, in Arlington County, Virginia, but that said agreement did not include the defendants Henriette or Frank M. Perper; they admit that the defendant Savage received a 5% interest in said agreement and that the defendant Harold E. Perper and the defendant Henriette Perper's son, the defendant Alan Sahn, received a 5% interest each, in said agreement; they admit the defendant Deckelbaum received a 2% interest in said agreement; they deny each and every other allegation set forth in paragraph five; they admit that arrangements were made with Holiday Inns of America, Inc., for a franchise for a Holiday Inn on the site of Glebe Road and Shirley Highway, Arlington County Virginia, and that the franchise was originally issued to the defendant Frank M. Perper; they deny each and every other allegation contained in paragraph six of the Cross-claim; the defendant Frank M. Perper admits that he has claimed the right to develop the metropolitan Washington area; the defendant Frank M. Perper admits that he has secured several Holiday Inn Motel franchises on behalf of several joint venture groups in the metropolitan area of the District of Columbia but he denies arranging for Holiday Inn motel franchises for his son, Martin Perper; the defendants deny each and every other allegation contained in paragraph seven of the Cross-claim; these defendants deny each and every other allegation contained in the Cross-claim.

SECOND DEFENSE:

Further answering the complaint, these defendants assert that no joint venture agreement was ever entered into between the plaintiffs and the defendant, Frank M. Perper or between the plaintiffs, the defendant Frank M. Perper, and anyone else. They assert that the plaintiffs and a number of other persons including five of the named defendants here did enter into a certain joint venture agreement as of the 29th of October, 1959, pertaining to a motel which was constructed at Glebe Road and Shirley Highway in Arlington, Virginia, said joint venture agreement being attached to their answer to the complaint.

THIRD DEFENSE:

The Cross-claim fails to state a claim upon which relief can be granted because the agreement alleged to have been entered into between the plaintiffs, the cross-claimants, and Frank M. Perper was not in writing and therefore was barred by the provisions contained in Title 12, Section 302 and 303 of the District of Columbia Code.

FOURTH DEFENSE:

Further answering the Cross-claim, these defendants assert that the Cross-claimants cannot maintain this action because of the expiration of the statute of limitations and their laches.

FIFTH DEFENSE:

Further answering the Cross-claim these defendants assert that there are numerous other persons holding ownership in certain of the sites referred to in the complaint, and in the Cross-claim; that these persons are necessary and indispensable parties, and that this Cross claim cannot therefore proceed without their joinder.

SIXTH DEFENSE:

The Cross-claim fails to state a claim upon which relief can be granted.

GALIHER & STEWART

By Richard W. Galiher
Attorneys for above named defendants

[Certificate of Service, 17 Dec. 1963]

[Filed Apr. 29, 1965]

PRETRIAL PROCEEDINGS

Complaint to establish joint venture and for accounting; cross-claim (Ds Margolius and Deckelbaum v. other Ds) to establish joint venture and for accounting.

UNDISPUTED FACTS:

In April 1959 defendant Margolius introduced to D Frank M. Perper the plaintiffs, Robert B. Weiss, Jacob M. Broidie, Norman Finkelstein, and Morris D. Stolar. They discussed the building of a motel at the site of Glebe Road and Shirley Highway in Arlington County, Virginia.

As the result of this meeting and others, it was orally agreed between plaintiffs and defendants Margolius and Frank M. Perper that if a contract could be secured for purchase of the land, if a franchise could be secured from Holiday Inns of America, Inc., to construct a Holiday Inn motel on said site, and if sufficient money investors could be secured, the parties would construct a Holiday Inn motel on said site. It is disputed between the parties whether the agreement was limited to this particular site.

Subsequently, plaintiffs, defendants Margolius, Deckelbaum, Harold Perper, Alan Sahm, and Julian Savage, and a number of other persons (not parties to this ac-

tion) who invested funds in said motel, entered into a written joint venture agreement dated October 29, 1959, copy of which is attached to the answer of D Frank M. Perper (D Frank Perper's PT Exhibit No. 9), for acquiring of the Glebe Road property and construction and operation thereon of a Holiday Inn motel.

Under said written agreement (Par. 2a) the aggregate interest of plaintiffs or their designees in said joint venture equalled the aggregate interest of the defendants who were parties thereto and/or their designees, and the interest of each of said groups was 50% of the interest remaining in said venture over and above the interests of the money investors who are not parties to this action.

Under date of January 15, 1960, Holiday Inns of America, Inc., as "Licensor" entered into a written license agreement with Frank Perper as "Licensee" covering the location at the intersection of Glebe Road and Shirley Highway, Arlington, Virginia. (There is a dispute between the parties as to whether said license agreement as executed by Holiday Inns was limited to the Glebe Road site.) (P's PT Exhibit No. 12).

The motel at said site was erected and has been operated under the joint venture agreement dated October 29, 1959, and there is no dispute between the parties as to said motel.

Defendant Frank M. Perper has or has had interests in certain other Holiday Inn motels or proposed sites therefor in and near the District of Columbia, and has claimed the right to develop Holiday Inns in the Metropolitan Washington area.

Defendant Martin Perper, a son of Frank M. Perper, has an interest in Holiday Inn motels at other locations in and near the District of Columbia.

With respect to said other Holiday Inn motels in and near Washington, D. C., Holiday Inns of America, Inc.,

executed license agreements relating to the specific sites.

D Henriette Perper was the wife of D Frank M. Perper, from whom she was divorced in 1965.

D Harold E. Perper is another son of Frank M. Perper.

D Alan Sahm was the stepson of Frank M. Perper (son of Henriette Perper).

D Julian Savage is a brother of Bernard Margolius.

D Ralph H. Deckelbaum is an attorney and business associate of D Bernard Margolius, from whom he acquired an interest in the joint venture.

PLAINTIFFS assert that prior to 1959 Ds Frank M. Perper, an experienced hotel man, and D Bernard Margolius were engaged in a joint venture relating to building and operating motels under franchises of Holiday Inns of America, Inc., but were not so engaged in the Metropolitan Area of the District of Columbia;

That Ps located a site at Glebe Road and Shirley Highway, Arlington County, Virginia, which they felt was desirable for such a motel, and agreed to acquire this property subject to the same being rezoned for motel purposes; that Ps knew of D Margolius' experience and skill in motel erections and operations and sought him as an associate and joint venturer in their proposed project; that D Margolius advised Ps he would act only if Ps would allow him to act in concert with D Frank M. Perper because of his prior business association with said Perper:

That as the result of conferences and discussions between Ps on one side and Ds Margolius and Frank M. Perper on the other, said parties agreed orally on April 26, 1959, in Richmond, Virginia, to enter into a joint

venture for the erection of a motel at the Glebe Road and Shirley Highway site and to obtain franchises for or the right to develop Holiday Inns in the metropolitan area of the District of Columbia; that it was agreed Ps would have a joint 50% interest in said joint venture and that Ds Margolius and Frank M. Perper would have the other 50% joint interest, subject to proportionate reduction of their respective shares depending upon how much equity capital was obtained from outside investors, the interest of each group (Ps and said Ds) to be 50% of whatever interest remained over and above the investors' interests;

That on April 28, 1959, Ps obtained an option to acquire the Glebe Road site;

That after the joint venture had been formed by Ps and Ds Margolius and Frank M. Perper, said Ds brought in Ds Deckelbaum and Savage as participants in their 50% share, the losses and profits of said 50% share to be split in accordance with their interests therein;

That Ps Weiss and Broidie went to Memphis, Tennessee, and there arranged with Holiday Inns of America, Inc., for a franchise for the site at Glebe Road and Shirley Highway together with rights to develop the metropolitan area of the District of Columbia, except that Holiday Inns reserved the right to build and own their own motels in said area (which Holiday Inns has never done).

Ps assert that Frank M. Perper, without the knowledge or consent of Ps, arranged for the franchise on the Glebe Road site to be taken in his name, and that it related only to the District of Columbia and Arlington County, Virginia, but that this area designation was stricken out by D Frank M. Perper, who made the franchise run only to the Glebe Road and Shirley Highway site by obliterating the area description; that Ps were not aware of the receipt or contents of said license agreement; and that subsequently D Frank Perper ar-

ranged to have said license agreement modified to add as named licensees Harold E. Perper and Edward Cohen (not a party to this suit), an investor in the Glebe Road motel whose interest therein is not contested.

Ps assert that the written joint venture agreement of October 29, 1959, was entered into with the other investors in said Glebe Road motel, plaintiffs and/or their designees and defendants Margolius and Frank M. Perper and/or their designees having interests in the Glebe Road motel under said written joint venture agreement in accordance with the April joint venture agreement between Ps and said Ds.

Ps assert that D Frank M. Perper claims the right to develop Holiday Inns in the metropolitan area of Washington, D.C., and that on the basis of the license agreement of January 15, 1960, Holiday Inns of America, Inc., recognizes the right of Frank M. Perper to develop Holiday Inns in said area, giving him a right of refusal or right of rejection on applicants for franchises in said metropolitan area;

That D Frank M. Perper, using the names of his sons and others has started to develop the metropolitan area of Washington, D.C., with motels franchised by Holiday Inns of America, excluding Ps from participation therein, and has prevented Ps from obtaining franchises on sites they had obtained.

Ps assert that their joint venture agreement of April 29, 1959, imposed upon Ps and Ds Frank M. Perper and Margolius a duty of loyalty to the joint enterprise and a duty of the utmost good faith, fairness, and honesty in their dealings with each other with respect to the subject matter of the joint venture, namely, the development of Holiday Inn motels in the metropolitan area of Washington, D.C., which duty began with the negotiations for formation of the joint venture and applied to every phase thereof, and was to continue and should have continued until the enterprise was terminated;

That in violation of his said fiduciary duty to Ps, D Frank M. Perper obtained execution of the Holiday Inn license agreement of January 15, 1960, in his own name, altered the licensed area originally recited therein, and claims the right to develop or approve franchises for Holiday Inns in the metropolitan area of Washington, D.C., and has prevented plaintiffs from obtaining franchises or the right to develop such motels in said area.

Ps further assert that D Frank M. Perper has placed his interest in said Holiday Inn Motels in the names of defendants Henrietta Perper, his wife, Harold E. Perper, and Martin Perper, his sons, and Alan Sahm, his stepson, as straw parties for Frank M. Perper, and without full disclosure to plaintiffs.

Ps contend that they are not bound by the terms of said license agreement of Jan. 15, 1960, which was obtained and altered by D Frank M. Perper without their knowledge or consent, and that said license agreement and any other license agreements obtained by said D or his designees for the Washington Metropolitan Area are the property of the joint venture of Ps with Ds Frank M. Perper and Margolius.

Ps therefore contend that they are entitled to 50% of the total interests held by D Frank M. Perper and/or Ds Henrietta Perper, Harold E. Perper, Alan Sahm, Julius Savage, and Martin Perper in all Holiday Inn motels operating or in construction or franchised in the metropolitan area of Washington, D.C., including those at:

New York Avenue and Bladensburg Road
730 Monroe Street, N.W., D. C.

U.S. Route #1, Berwyn Road and Baltimore Blvd.,
College Park, Md.

Allentown Road and Maxwell Drive, Camp Springs,
Md.

Rosslyn, Virginia.

Route #50, Arlington Blvd., Arlington, Va.

17th Street and Rhode Island Ave., N.W., D.C.

New York Avenue (2828), N.E., D. C.
Dulles International Airport, Chantilly, Virginia.

Greenbelt Road and Washington-Baltimore Parkway, Maryland, all of which motels belong in truth and in fact to said joint venture.

Ps seek no relief against Ds Margolius or Deckelbaum.

Ps ask judgment:

1. Declaring the franchise agreements from Holiday Inns of America, Inc., for motels in the metropolitan area of Washington, D.C., belong to the joint venture formed by Ps with Ds Frank M. Perper and Margolius in April, 1959, and permanently enjoining Ds from using said franchises for their sole use and benefit.

2. Requiring Ds (except Ds Margolius and Deckelbaum) and each of them to convey and transfer to Ps 50% of their interest in all motels created by said Ds, or about to be created by them, or operated by said Ds under the franchise of Holiday Inns of America, Inc., in the metropolitan area of Washington, D. C., except the original motel at Glebe Road and Shirley Highway in Arlington County, Virginia, subject to such terms and conditions as the Court may find fair and just.

3. That the joint venture, except the Glebe Road and motel, be dissolved, the properties be sold, and the proceeds distributed under order of the Court.

DEFENDANTS FRANK M. PERPER, HENRIETTE PERPER, HAROLD E. PERPER, JULIAN SAVAGE, and ALAN SAHM deny that Ps are entitled to any of the relief prayed.

These Ds assert that as the result of the meeting in April 1959 between D Margolius, Ps, and Frank M. Perper, and a subsequent meeting, it was agreed between them that if a contract could be secured for the purchase of the land at the Glebe Road site, if a franchise could

be secured from Holiday Inns of America for said site, and if sufficient money investors could be secured, that the parties would construct a motel on said site; that a franchise was secured from Holiday Inns of America, issued in the name of defendant Frank M. Perper; that subsequently a joint venture agreement was prepared by Ds Margolius and Deckelbaum which set forth the rights of the various persons who had an interest in said joint venture (D Frank M. Perper's PT Exhibit No. 9); that although D Frank M. Perper entered into the agreement with Ps with respect to the said Glebe Road motel, which resulted in the joint venture agreement drawn by Ds Margolius and Deckelbaum, he elected to have the interest he was to receive in said motel given to members of his family, as set forth in said agreement; that said agreement also involved a number of other persons who had invested in said joint venture.

These Ds deny that D Frank M. Perper at any time entered into any agreement with Ps to obtain other sites in the metropolitan area of the District of Columbia or to build motels, and assert that the only agreement ever entered into between Frank M. Perper and Ps in the agreement pertaining to the Shirley Highway and Glebe Road site, and is stated, when said agreement was reduced to writing, Frank M. Perper elected to give the interest he was to receive to members of his family; that D Frank M. Perper did participate in the arrangements pertaining to the financing of the Shirley Highway-Glebe Road a joint venture.

D Frank M. Perper denies he was engaged in a joint venture with D Margolius relating to building and operating of motels under franchises of Holiday Inns of America. He asserts that D Margolius did have an interest in the Glebe Road motel, and there were other occasions when he was associated in other business deals and agreements pertaining to the construction and operation of motels, but asserts said agreements were always entered into on an individual basis, and D Margo-

lius had no agreement with D Frank M. Perper other than with respect to various business deals that might be entered into between the parties, and asserts that D Margolius has secured franchises from Holiday Inns of America and has constructed and continues to operate motels in which D Frank M. Perper has no interest whatsoever.

D Frank M. Perper denies that he has taken his interest in any motels in the name of Henriette Perper, Harold Perper, Martin Perper or Alan Sahm, and asserts the interest of these persons and of a D Julian Savage in certain motels is their own, and D Frank M. Perper has no right or interest whatsoever in the share of motels which belong to them.

Ds Henriette Perper, Harold Perper, Alan Sahm and Julian Savage deny that any agreement was entered into between D Frank M. Perper and Ps and Ds Margolius and Deckelbaum or with Ps, Ds Margolius and Deckelbaum and themselves for construction of any motels in the metropolitan area of the District of Columbia except with respect to the motel at Shirley Highway and Glebe Road, and deny that the D Frank M. Perper placed any interest in any motels belonging to him in the name of Martin Perper.

Alternatively, Ds Frank M. Perper, Henriette and Harold Perper, Sahm and Savage, in addition to denying that any agreement was entered into between the parties except as heretofore stated, these Ds assert the following defenses to the joint venture agreement alleged by Ps:

1. The statute of frauds.
2. Lack of consideration.
3. Laches and/or the statute of limitations.

In addition, these Ds assert that there are numerous parties who hold interests in the various motels in-

volved in this litigation who have not been made defendants and who are indispensable parties to a proper adjudication of this litigation, and said Ds therefore contend the court is without jurisdiction of these persons and the case cannot be properly adjudicated without said interested and indispensable parties' being added to the litigation.

All of the Ds except Ds Margolius and Deckelbaum assert that the property located at Dulles International Airport is beyond the Metropolitan Area of the District of Columbia.

DEFENDANT MARTIN H. PERPER denies that Ps are entitled to any of the relief prayed.

Said D asserts he was never a party to the alleged joint venture agreement, and further any franchises he may hold in Holiday Inns were obtained solely through his efforts and dealings without the aid and assistance of D Frank M. Perper, and that he is unaware of any right on the part of Frank M. Perper to approve franchise holders of Holiday Inns in the Washington Metropolitan Area. Said D states he does not hold nor did he ever hold any interest as a straw party for D Frank M. Perper in motels in the Washington Metropolitan Area, and further, that D Frank M. Perper never took any interest in any motel in the Washington Metropolitan Area in the name of this D; and he asserts further that he is the beneficial owner of any interest that appears in his name and as a result of such interest receives all tax benefits and income from such motels.

D Martin Perper raises the following defense:

1. Ps' claim cannot be granted due to the fact that the agreement alleged to have been entered into between Ps, D Margolius and D Frank M. Perper, was not in writing and therefore is barred by the Statute of Frauds (D.C. Code, §§12-302 and 12-303).

2. Ps' claim is barred by the statute of limitations and laches in that the alleged agreement was entered into more than three years prior to the filing of this action.

3. There are various other individuals holding ownership interests in various sites and motels in which Ps allege they have an interest and, as such, these individuals are necessary and indispensable parties to this action.

4. D Martin H. Perper was never a party to the alleged joint venture agreement entered into between Ps, D Frank M. Perper, and D Margolius.

5. D Martin H. Perper is the beneficial owner of any interest that appears in his name in any motel in the Washington Metropolitan Area, does not hold and never held any such interest as a straw party for D Frank M. Perper, and Frank M. Perper never took any interest in any motel in the Washington Metropolitan Area in the name of D Martin H. Perper.

DEFENDANTS BERNARD MARGOLIUS and RALPH H. DECKELBAUM adopt Ps' statement, except to call the court's attention to the fact that Ps make no claim against either of them, and cross claim against their co-defendants as follows:

CROSS-CLAIM: Ds Margolius and Deckelbaum v. All Other Defendants:

The contentions of Ds Margolius and Deckelbaum are essentially the same as those of Ps, and, in addition thereto D Margolius relies on the joint enterprise that existed theretofore between him and D Frank M. Perper, and Ds Margolius and Deckelbaum both rely on the fact that pursuant to the joint enterprise between Ps, D Frank Perper, and D Margolius, the first Holiday Inn in the Washington Area, namely, the one at Glebe Road, was acquired for and on behalf of the joint enterprise in the name of Frank Perper; that the joint venture paid for the franchise; that Frank Perper, while not designated

trustee, nevertheless held said franchise in trust for the joint venture: that because of the policy and practice of Holiday Inns of America, Inc., to prefer first holders of franchises in various areas in granting additional franchises in areas where a franchise or franchises existed, D Frank Perper was given preference in the Washington Metropolitan Area for additional franchises: that in equity he received such preferences and additional franchises in the Metropolitan Area of Washington in trust for the joint venture because he held the first franchise in the Metropolitan Area of Washington in trust for the joint venture.

The claim of Ds Margolius and Deckelbaum is against their co-Ds for their respective shares of the 50% interest committed to D Frank M. Perper and D Bernard Margolius under their joint venture agreement with Ps, which they assert is 16% to D Margolius and 4% to D Deckelbaum of the excess over the interest of the money investors who are not parties to this action.

In addition to a judgment declaring the franchises in the Metropolitan Area of Washington (except the Glebe Road motel) in the names of their co-Ds, their nominees, and/or any persons claiming through them, to be held for the use and benefit of the joint venture composed of Ps, these two Ds, Frank M. Perper, and Julian Savage, and conveyance to said joint venture of its interests therein, they ask an accounting for any and all profits resulting from said joint venture, and for such other relief as to the court may seem proper and as the evidence may show them entitled to.

ANSWER TO CROSS-CLAIM:

Ds Frank M. Perper, et al., (except Margolius and Deckelbaum), as cross-defendants, in answer to the cross-claim of Ds Margolius and Deckelbaum make the same assertions and denials and raise the same defenses as were asserted, denied, and raised with respect to the principal complaint.

STIPULATIONS:

Facts under "UNDISPUTED FACTS".

It is stipulated that the following may be admitted without formal proof of authenticity, subject to all other objections:

All documents on P's List of Pretrial Exhibits (No. 1 to 13, inclusive), as described on the attached list.

All documents on D Frank M. Perper's Pretrial Exhibit List (No. 1 through 13), attached hereto.

All documents on D Martin Perper's Pretrial Exhibit list (No. 1 through 13), attached hereto.

All documents on D Margolius and Deckelbaum's List of Pretrial Exhibits (No. 1 through 55), attached hereto.

It is stipulated that the persons whose depositions were taken in Memphis, Tennessee, are beyond the 100-mile radius of this Court.

Counsel agree to exchange the names and addresses of all witnesses known to them, including experts, but exclusive of impeachment witnesses, within two weeks (filing a copy of said list with the Clerk of the Court), and if any counsel should learn of any additional witnesses prior to trial, he will inform all other counsel promptly and prior to trial and file a supplemental witness list with the Clerk.

The Examiner has requested counsel to come to the trial with the maximum authority to settle the case which will be allowed them by their principals.

Trial attorneys - For Plaintiffs - Mark P. Fried-
lander

For Ds Frank M. Perper)	
Henriette Perper)	
Harold E. Perper)	Richard W. Galiher
Julian Savage)	
Alan Sahm)	

For D Martin Perper - Irwin H. Liptz
 For Ds Margolius and Deckelbaum - Arthur J.
 Hilland

Assistant Pretrial Examiner

[Filed Dec. 22, 1965]

COURT'S OPINION

The above cause came on for further trial before
 THE HONORABLE ALEXANDER HOLTZOFF, United
 States District Judge.

Appearances:

For the Plaintiffs:

MARK FRIEDLANDER, ESQ.

For the Defendants Frank M. Perper, Henrietta Per-
 per, Harold E. Perper, Julian Savage & Alan Sahm:

RICHARD W. GALIHER, ESQ.

For the Defendant Martin Perper:

EARL FOREMAN, ESQ.

BENNETT COOPER, ESQ.

For the Defendants Margolius & Deckelbaum:

ARTHUR J. HILLAND, ESQ.

OPINION OF THE COURT

THE COURT: This is an action brought on an alleged
 oral contract to undertake a joint venture and to impress
 a constructive trust upon the proceeds of the joint ven-
 ture claimed to have been appropriated by the principal
 defendant and his associates.

The alleged contract is claimed to have been an oral agreement between the plaintiffs and the defendants to enter into a joint venture to build, develop and operate or sell Holiday Inns in the Washington metropolitan area.

Holiday Inns of America, Inc., is a corporation with its principal office at Memphis, Tennessee, which is engaged in the business of maintaining a chain of motels or motor inns known as Holiday Inns. The mode of operation is as follows. The corporation neither builds nor owns nor operates the motels itself. It grants licenses, which are referred to as franchises, to individuals or corporations at various points throughout the United States, to build, maintain and operate an inn known as a Holiday Inn. Under this license the operators of the inn are required to live up to certain standards, and maintain services of specified types. They are subject to inspection on the part of representatives of the corporation. In turn, they receive assistance from the corporation by way of interchange of business between inns, suggestions, recommendations, and otherwise.

The defendant Bernard Margolius was counsel in various matters for the defendant Frank Perper, who has been for many years engaged in various aspects of the hotel business. The relation of attorney and client seems to have developed into an association of business associates and partners, so that the defendant Margolius and the defendant Frank Perper became associated in various enterprises involving the building and operation of motels and inns in various places, especially throughout the southeast.

The four plaintiffs are businessmen engaged in various aspects of real estate business and building business. The four of them became interested in a vacant site located in Arlington, Virginia, within the Washington metropolitan area, at the intersection of Shirley Highway and Glebe Road. It occurred to them that this location might be a good site for the construction of a Holi-

day Inn. One of the four plaintiffs was well acquainted with the defendant Margolius and approached him in the matter for his cooperation and advice. He, in turn, stated that the defendant Frank Perper had been his partner or associate in all the motels in which he, Margolius, had been interested, and therefore he would not go into the enterprise without the defendant Frank Perper.

Accordingly, the defendant Margolius arranged a meeting between the four plaintiffs, himself, and the defendant Frank Perper, which was held at a Holiday Inn in Richmond, Virginia, sometime in April of 1959. The exact date of the conference is in dispute. This is not a surprising matter since no record of the date was kept by anyone.

The plaintiffs claim that at that meeting an agreement was entered into to undertake the building of a Holiday Inn at the site to which reference has just been made, provided a franchise or a license could be obtained from Holiday Inns of America for that purpose.

It is further claimed that, in addition, there was an oral agreement between the parties whereby it was agreed that after the Holiday Inn in Arlington would be under way, joint efforts should be made to develop other Holiday Inns at locations within the Washington metropolitan area.

This suit is brought on the last mentioned contract.

The defendants other than Margolius and Deckelbaum deny that any such contract was made.

The four plaintiffs bring this suit to enforce this contract and to impress a trust on what they claim to be the assets of the joint venture.

The defendant Bernard Margolius apparently declined to become one of the plaintiffs in this action and he was joined as a defendant, on the theory, presumably, that he was a necessary party. The same was true of his as-

sociate Ralph Deckelbaum. After some delay the defendants Margolius and Deckelbaum filed a cross-claim against their co-defendants, alleging the existence of the oral contract and requesting the same relief as that requested by the four plaintiffs.

The question of fact in this case is whether the alleged oral contract to create a joint venture to develop Holiday Inns in the Washington metropolitan area, in addition to the Holiday Inn to be erected at Shirley Highway and Glebe Road, was ever entered into.

The defendant Margolius and each of the four plaintiffs individually testified that at the conference in Richmond in April 1959 an oral agreement was entered into to build a Holiday Inn at the site just mentioned, provided the land could be obtained and a franchise secured, and after that project was underway, to develop other inns within the Washington metropolitan area.

The detailed conversations which it is claimed eventuated into a binding contract were not narrated by any of the four plaintiffs or by Mr. Margolius. Counsel for the defendants did not object on the ground that the testimony was in the form of incompetent conclusions. It was quite apparent to the Court that he deliberately made a tactical choice in not objecting. The Court did not exclude the evidence sua sponte because the Court follows the practice of not excluding evidence on its own initiative merely because it may be incompetent, although it may do so if it is irrelevant.

So that the Court does not have before it any attempt to narrate the conversations which it is claimed constituted the contract. All that the Court has before it is the interpretation or the conclusions of each of the five witnesses to the effect that conversations took place which, according to the witness' understanding, became a binding oral contract. This is a very weak foundation on which to build an oral contract of such a magnitude as is claimed here.

The defendant Frank Perper denies that any contract of any kind was reached at the Richmond conference. He claims that the contract to build the Holiday Inn at the Arlington site was concluded at a later conference and that only some initial discussion was held at the conference in Richmond. He denies that there was any mention or discussion of developing any additional Holiday Inns in the Washington metropolitan area beyond the site at Arlington, Virginia.

The Court was impressed with the fact that apparently Mr. Perper has a poor memory for details. In fact, in several instances or different occasions he put different interpretations on the same incident. While the Court has no doubt he was trying to tell the truth as he best remembered it, the Court felt, as just said, that his memory for minor details is not good and that he apparently, so to speak, is apt to paint with a broad brush.

The Court is convinced that there was some discussion of the possibility or likelihood of being able to develop additional Holiday Inns in the Washington metropolitan area if the first project, the Arlington site, successfully got underway. That is a far cry from saying, however, that the parties entered into a binding contract to develop additional inns. It may have just been an inchoate plan or an idea that the parties were hoping to develop in the future.

When suit is brought on an oral contract, the existence of which is denied, the surrounding circumstances preceding, contemporaneous and subsequent to the making of the alleged contract often throw an illuminating light on the question whether such a contract was entered into. It is of some significance that there is not a scrap of paper that has been produced showing that such a contract or agreement existed as between the parties to this law suit. There is no evidence that any one of the parties ever even placed a written memorandum into his personal file indicating or recording the making of such

an agreement; and yet here was an agreement that might involve large building operations, involving large sums of money and lasting for a number of years to come. The plaintiffs are all experienced businessmen and one wonders why it is that if, as they say, a contract was entered into, no record of it was made anywhere by anyone.

The Court is impressed also with the fact that insofar as the joint venture to build a Holiday Inn at the intersection of Shirley Highway and Glebe Road in Arlington, Virginia, is concerned, a formal contract creating the joint venture was entered into. The matter was considered of such importance that counsel prepared several consecutive drafts until the final draft was found acceptable by all concerned. There was no mention of any other inn beyond the one to be built in Arlington, Virginia, in any one of these drafts. Yet, Mr. Margolius testified that previously to this transaction, whenever he entered into a project with the defendant Frank Perper involving the building or the construction or operation of a motel, they always entered into an individual written contract. They had, however, no general contract and while each one took the other into a partnership or association in any venture undertaken, there was no contention that there was any binding contract between them to do so.

Much light is cast by the conduct of the parties subsequently to the date on which the alleged contract is claimed to have been entered into. Shortly after the Holiday Inn at Arlington was underway, the defendant Frank Perper started a project to construct another motor inn in another part of the Washington metropolitan area, near Catholic University, in the northeast section of the city. The plaintiffs did not come to him and ask to be admitted into the enterprise, although they knew that he was undertaking it. On the contrary, one or two of the plaintiffs applied to Holiday Inns of America, Inc., for a license to build still another motor inn in the Washington metropolitan area on what is known as the Wash-

ington-Baltimore Parkway. They did not invite either the defendant Frank Perper or the defendant Margolius into the enterprise. They apparently considered that they were free to undertake it. It stands to reason that if they thought that they were free to undertake it they could not have been of the opinion that there was any binding contract between the parties that all of them are entitled to become partners in any similar enterprise in the general area of Washington.

Holiday Inns of America declined to grant this last mentioned application and it was only after that application was denied that the plaintiffs decided to bring this suit. It is apparent to the Court that it was an afterthought.

The importance of these last mentioned episodes is that they tend to indicate the absence of any binding contract and certainly that the plaintiffs, who are now alleging the existence of a binding contract, did not think one existed. They made no protest, as he has been said, to the defendant Perper. One of the plaintiffs was asked why he did not do so, and he gave a reason that really bordered on puerility. He indicated that there was no use talking to the defendant Perper because no headway could have been made with him. The plaintiffs do not impress the Court as being timid persons who are too fearful of asserting their rights for fear that they might be rebuffed.

It is true that the defendant Margolius, by a letter of January 9th, 1962, written to Frank Perper, indicated that he felt aggrieved in that the defendant Perper did not invite him to participate in the project of building a Holiday Inn near Catholic University. This letter, however, is subject to the construction of expression of a grievance or disappointment that the defendant Perper did not invite the writer to participate in the enterprise, rather than a protest or an assertion of a contract right.

The defendant Margolius refused to join as a plain-

tiff in the action. The Court, of course, realizes that as an honorable member of the bar of high standing, he was in a position of delicacy and preferred not to enter into an open controversy with a former client. On the other hand, this letter is subject to the interpretation that it was not an assertion of a legal right.

There is another very important circumstance. Admittedly, the defendant Frank Perper was a hotel man of many years' experience, very active in the hotel field. He had never met any one of the four plaintiffs until they were introduced to him at the Richmond conference by Mr. Margolius. Is it likely that on an acquaintance of an hour or two or three, perhaps less, the defendant Perper, who had many years' experience in the business, would have immediately taken these strangers into partnership with him for a large and unlimited and undefined number of enterprises, without discussing the details of the arrangements, without looking into their connections or investigating them or ascertaining how they could be of help to him? It seems unlikely that businessmen of many years' experience would have done so.

In view of this discussion of the evidence the Court reaches the ultimate conclusion and makes the ultimate finding that, while at the early conferences between the plaintiffs and the defendant Perper and the defendant Margolius there was a discussion of the possibility of developing additional Holiday Inns in the Washington metropolitan area if the project for Arlington got underway successfully, these conversations did not reach beyond the inchoate stage and were merely conversations concerning future possibilities and future plans. They did not constitute a firm and binding agreement to undertake, as a joint venture, future developments along the lines stated, that is, building and operating additional Holiday Inns in the Washington metropolitan area.

Now there is another matter to which the Court will advert, and that is the question of laches. It is, of course,

elementary that laches is an equitable doctrine. It does not depend on delay alone. It depends on a knowing delay with a change of position or other prejudice caused to the opposing party as a result of the delay. The length of the delay is not always governing. There are times when a fairly short delay may constitute laches; there are other occasions on which delay for a long period which harms or prejudices no one may not constitute laches.

In this case the crux of the alleged joint venture was, as had been the case in connection with the inn at Arlington, Virginia, that each of the parties would make a contribution by way of services, capital, or both, or in some other manner, to the success of the enterprise. The other enterprises, however, went on without any participation on the part of any of the plaintiffs; they contributed nothing, either by way of services or capital or anything else. What they would have done had they been participants in the enterprise was done by other persons. They did not even come forward and offer to participate. I am referring now to the four plaintiffs.

Under these circumstances, the delay obviously prejudiced the defendants because if the plaintiffs had been participants in the enterprise they would have made contributions, by way of services or capital or otherwise, which the defendant Perper was required to get elsewhere.

The Court concludes that this is a case where the inaction of the plaintiffs, knowing that the defendant Perper was proceeding with other similar projects, constituted laches and the Court finds that the plaintiffs are guilty of laches.

In view of these considerations, the Court deems it unnecessary to pass upon the defense of the statute of frauds.

Accordingly, the complaint will be dismissed on the merits and judgment may be entered accordingly.

A transcript of this oral decision will constitute the findings of fact and the conclusions of law.

The Court might add that it is indebted to all four counsel for their very able and helpful assistance in the matter.

[Filed Jan. 14, 1966]

JUDGMENT

This cause having come on for hearing at this term of Court, it is by the Court this 14th day of January, 1966,

ORDERED That the claims of the plaintiffs, Robert B. Weiss, Norman Finkelstein, Morris D. Stolar and Jacob M. Broidie, and the cross-claim of the defendants, Bernard Margolius and Ralph H. Deckelbaum be and are hereby dismissed, and judgment be and is hereby entered in favor of defendants, Frank M. Perper, Henriette Perper, Harold E. Perper, Julian Savage, Alan Sahm and Martin Perper, and it is further,

ORDERED That since plaintiffs have asked for no relief against the defendants Bernard Margolius and Ralph H. Deckelbaum, that the Complaint be and is hereby dismissed as to these defendants.

/s/ Alexander Holtzoff
Judge

NOTICE OF APPEAL

Notice is hereby given this ____ day of _____, 19 ____, that Robert B. Weiss, Jacob M. Broidie, Norman Finkelstein, and Morris D. Stolar, hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the ____ day of _____, 1965 in favor of Frank M. Perper, Henrietta Perper, Harold E. Perper, Julian Savage, Alan Sahm, and Martin Perper, against said Robert B. Weiss, Jacob M. Broidie, Norman Finkelstein, and Morris D. Stolar.

FRIEDLANDER & FRIEDLANDER

By Mark P. Friedlander
Attorney for Plaintiffs.

Serve:

Richard W. Galiher, Esq.
Earl N. Foreman, Esq.

[Filed Feb. 9, 1966]

NOTICE OF APPEAL

Notice is hereby given this 9th day of February, 1966, that the defendants and cross-plaintiffs, Bernard Margolius and Ralph H. Deckelbaum, hereby appeal to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 14th day of January, 1966, in favor of the defendants, against said cross-plaintiffs.

/s/ Arthur J. Hilland
Attorney for Defendants and
Cross-Plaintiffs, Bernard
Margolius and Ralph H.
Deckelbaum

Mail copies to:

Richard W. Gallagher, Esquire
Earl Foreman, Esquire
Mark Friedlander, Esquire

DEPOSITION OF JULIAN SAVAGE

March 14, 1963

[49]

a witness of lawful age, was duly sworn by the notary public and, being examined by counsel, testified as follows:

DIRECT EXAMINATION

BY MR. FRIEDLANDER:

[50] Q. Would you state your full name, sir? A. Julian Savage.

Q. And your business address? 1825 Connecticut Avenue, Northwest, Washington, D.C.

Q. What is your profession? A. I'm a CPA, member of the bar, and also engaged in the motel business.

* * *

[64] Q. So that your only conversation about your interest was a conversation that you had with Mr. Perper? A. Yes, sir.

Q. Now, can you fix the time of that, other than April of '59, or is that a good time? A. No. I can't be specific about it.

Q. Did you make a memorandum of your conversation? A. No, sir.

Q. What interest did Mr. Perper say you were to have? A. He didn't say.

Q. Did he say you were to have an interest? A. He said he thought I would have an interest in it.

Q. But he didn't say how much? A. No, sir.

Q. And his words, in substance, were he thought you should have an interest? A. That's right.

Q. Did he tell you who else was interested in this particular site? A. Well, I knew that Mr. Finkelstein and Mr. Broidie were interested in it, and I knew Mr. Margolius was interested in it.

[65] Q. How did you know Weiss and Broidie were interested in it? A. Because I understood from Mr. Perper they were going to meet us there at the site.

Q. How did you know Finkelstein was interested in it? A. Because of the very reason I said.

Q. He was to meet you there? A. That's right.

Q. He didn't show up, did he? A. Not that — I don't know. I don't recall whether he was there or he wasn't there.

Q. You didn't mention his name? A. No. I don't recall whether he was there.

Q. When you got to the site, did you meet Mr. Broidie and Mr. Weiss? A. They were there; yes, sir.

Q. Now, what was said, in your presence, at the site? A. Well, it was a matter of looking the site over, to see how a motel might be situated on it, what the approaches might be, where the entrances might be and generally how much preparation work, for example, might have to be done in connection with building the motel.

Q. Now, did you at that time hear any conversations between Mr. Broidie or Mr. Weiss and Mr. Perper or Mr. [66] Margolius? A. No, sir.

Q. You were there all the time? A. Yes, sir.

Q. Was there any explanation, so far as you were concerned, why all those people were there together? A. Looking at the site.

Q. And what was the purpose, so far as you could learn, that they were looking at the site? A. The possibility of picking up an option on this ground.

Q. Well, who was talking about picking up an option — Mr. Perper by himself or was Mr. Weiss or Mr. Broidie? A. I don't recall.

Q. You don't recall that at all? A. I don't recall who specifically was discussing the option.

Q. Well, who did Mr. Perper talk to besides you at the site? A. I believe he spoke to Mr. Weiss. I believe he spoke to Mr. Broidie.

Q. Can you tell us whether or not the visit to the site was prior to any agreements made between Mr. Perper and Mr. Broidie or Weiss? A. I don't know of any agreements.

[67] Q. Did you know of any agreements that were made afterwards, after the visit to the site? A. There must have been an agreement afterwards, because there

was a meeting in Mr. Margolius's office pertaining to the site and to the Shirley-Glebe motel.

* * *

Q. Did you learn later, from anything that Mr. Perper told you, that he had met with these gentlemen, that is, Mr. Weiss, Broidie and others, in Richmond? A. This I knew at a subsequent meeting in Mr. Margolius's office.

Q. Well, did you understand at the subsequent meeting that the meeting in Richmond had been before or after the visit to the site? [68] A. I couldn't pinpoint it, but I would guess that the visit to the site might have been after the meeting in Richmond, but I wouldn't —

Q. Why would you guess that? A. — want to —

Q. Why would you guess that? A. Well, I'm just taking a guess, —

Q. Why? A. — and I have no reason except from the standpoint that I presume that the site was looked at after the meeting in Richmond, and further looking at the site or looking at the site, rather, to further the discussion they had in Richmond was made after the Richmond meeting.

Q. Well, presuming that you're correct, that is the visit to the site was after the Richmond meeting, — presume that — was there anything that was said at the site which led you to believe that the option had not yet been taken for the property? You mentioned in your testimony that you were to decide whether to take an option. A. Yes. I don't think at that time an option had been taken.

Q. And the reason you think it had not been taken is from what you heard that day? [69] A. That's right.

Q. You heard something — A. That's right.

Q. — that made you think that? A. That's right.

Q. And — A. No. When you say — no; I don't think it was from what I heard. I know what the date of the option was. The date of the option was April 28th. Now —

Q. This was before that. A. So, this was, I think, a little before that.

Q. So, you think at the time of the visit to the site your best guess or memory would be that the option had not yet been taken? A. That is right.

Q. And you knew, did you not, from the conversation ensuing at the site, that the discussion was about whether they should take up the option or not? A. As to whether this —

Q. Yes. A. — was a proper site.

Q. Now, who was the person that you could tell or judge who had the right to take up the option? Mr. Perper? Mr. Weiss? Mr. Broidie? A. I believe it was Mr. Broidie and Mr. Weiss.

[70] Q. So, they were seeking, then, the help from Mr. Perper, were they? A. That is correct.

Q. To determine whether to take it up? A. That's right.

Q. But you have no idea at all at that time of the visit to the site what the arrangements were? A. That is right.

Q. Now, did Mr. Perper tell you, in the presence of Mr. Broidie or Mr. Weiss, that you would probably have an interest in this? A. At that particular time, —

Q. Yes. A. — are you asking me, —

Q. Yes. A. — at the site?

Q. Yes. A. No, sir.

Q. When he had the conversation with you, he did it on the side like? A. Well, as I told you before, I had seen Mr. Perper on numerous occasions before this visit to the site, and —

Q. How long — A. — in connection with his personal income tax returns.

[71] Q. That would have been — it would have to be — before April 15th? A. Before April 15th; yes, sir.

Q. How many times had you talked to him about this possible deal prior to the visit to the site? A. I can't be specific how many times.

Q. Well, your best memory of how many times? A. Maybe two or three times.

Q. And on each occasion what did you discuss? Tell us the substance. A. The fact there would be a possibility of a deal for a Holiday Inn at the Shirley-Glebe location.

Q. This is your conversation with Mr. Perper? A. This is what —

Q. Frank Perper? A. That from Mr. Perper.

Q. Yes. A. And that if a deal were consummated that I would be expected — I could be expected — to be in the deal, and my function would be as an accountant.

Q. Now, that was the same tenor on all three conversations you had prior to visiting the site? A. To that effect; yes, sir.

* * *

[106] Q. Now, you went to the site, and then after going to the site did you attend a meeting in your brother's office in relation to the Shirley-Glebe motel? A. Yes, sir.

Q. And do you recall who was there? A. Well, I can recall two meetings, I believe. One was a meeting in connection with procuring investors, at which time I believe we had brought a few potential investors to Mr. Margolius's office.

Q. Who did you bring there? A. Well, one of the people who stands out in my mind is a man by the name of Rudy Arkin — A-r-k-i-n. There might have been other people there, but I don't — I mean I know [107] they were other people there, but I don't recall who was there.

Q. Now, I call your attention to a meeting which occurred shortly after your visit to the site, at which time there was a discussion as to the amount of interest that different people would have, arrangements for the venture. Do you recall such a meeting? A. Yes; I do.

Q. Was it at that meeting that you learned your interest was five per cent? A. The specific percentage, I believe, was discussed at that meeting; yes, sir.

Q. Well, now, you know what meeting I am talking

about? A. You are talking about the one right after or shortly after the meeting —

Q. At the site. A. — that they had at the site.

Q. Now, who was there at that meeting, now that we know what meeting we are talking about? A. It was Mr. Broidie, Mr. Stolar, Mr. Finkelstein, Mr. Weiss, Mr. Margolius. I'm not sure whether Mr. Deckelbaum was there or not, and I'm not sure whether Mr. Perper was there or not.

Q. Was Mrs. Perper there? [108] A. No.

MR. HILLAND: This is what meeting?

THE WITNESS: This is the meeting shortly after they visited the site in about April of '59. It could have been May. Yes, sir.

BY MR. FRIEDLANDER:

Q. It could have been May? A. Yes.

Q. And at that time you are not sure whether Mr. Perper was there? A. I'm not sure of it.

Q. What is your best memory — that he was or he wasn't? A. I don't remember his being there.

Q. You do not remember his being there. What about this? What took place then in the absence of Mr. Perper, if he wasn't there? What did you discuss? A. I think this was more or less an organization meeting, and it was discussed — the topics discussed were duties of the various promotion group —

* * *

[109] Q. Who told you you were getting five per cent? A. Mr. Perper.

* * *

[112] Q. So, you understood very clearly, as a result of the meeting with Mr. Perper and Mr. Weiss, how the division would be made; is that right? A. Yes.

Q. Was anything said about the commitment for the area? A. No, sir.

Q. What? A. No, sir.

Q. Was there any conversation at all prior to June, the beginning of June, about commitments for the area? A. Not to my knowledge.

Q. Did you ever talk to Mr. Margolius about commitments for the area? A. No, sir.

Q. Did you ever talk to Mr. Perper about commitments for the area? A. No, sir.

Q. Did you ever talk to Mr. Weiss about commitments [113] for the area? A. Well, Mr. Weiss spoke to me about a commitment for the area.

* * *

Q. And why did you write it? A. It was the result of Mr. Weiss and, I believe, Mr. Broidie coming to the office after they had returned from Memphis and telling me of a conversation that they had had with Mr. Kemon Wilson, and they told me what their understanding was, and they suggested that a letter be written confirming what their understanding was.

Q. Did you do that? A. Oh, yes.

Q. Did you get an answer to that letter? [114] A. I got a reply — as I recall — I'm not sure — I got a reply, but I'm not sure it was in connection with this, but I got a reply subsequently, in July, as I remember it, from Mr. Wilson, and I don't remember the exact details of it, but it was to the effect that there was no such thing as an area —

Q. Commitment? A. Yes, that this actually was a site franchise.

* * *

Q. Doesn't Mr. Perper now have from Holiday Inns a commitment for the metropolitan area? A. Not to my knowledge.

Q. You have no knowledge of that? A. No, sir. He has the right to protect his franchise.

* * *

[115] Q. Well, let's call it that — protection of franchise holders. So, we know that Mr. Perper at the present time has the protection of a franchise right? [116] A. That's right.

Q. Now, the franchise right was for the original Glebe-Shirley motel, wasn't it? A. Yes, sir.

Q. Are you telling me now that Mr. Perper was the

holder of that franchise on that Glebe-Shirley motel alone? A. This was originally the understanding. However, that was changed to where the actual not named parties on the franchise are Harold E. Perper and Edwin S. Cohen as well as Frank Perper.

* * *

[117] Q. When you got your answer in July from the June letter, I think you said it was, did it say anything about the franchise protection? A. No. It just simply said this was a site franchise, to the best of my knowledge.

Q. Yes. A. I would have to look at the letter to refresh my memory.

Q. Who did you write that letter on behalf of, the [118] one that you wrote in June that there's been some talk about? A. Well, I wrote it at the request of Bob Weiss, and I think Jake Broidie was there, too.

Q. For whom? Who were you writing it for? A. I don't know. I signed it Julian Savage and Company.

* * *

(The letter referred to, being a [119] photo copy of a letter dated June 6, 1959, was marked for identification as Plaintiffs' Exhibit 1.)

BY MR. FRIEDLANDER:

Q. Would you look at that? A. Yes, sir.

Q. And can you tell us, from looking at the letter, whether you wrote that on behalf of the joint venture, which would have included Mr. Perper and Mr. Margolius and Mr. Weiss, Stolar, Finkelstein, so forth, and yourself?

A. I presumed this could be deemed to be on behalf of the —

Q. Could I see it now? A. — joint venture.

Q. Looking at some of the words in here: "Will you kindly confirm to us that you are holding the franchise for this site together with the area," — A. Yes.

Q. — "except as to your company owned motel site, pending our formal application?" And then you sent a copy of the letter to Bernard Margolius and Robert Weiss.

Now, you were also writing that letter on behalf of Mr. Perper and Henriette Perper?

* * *

[120] THE WITNESS: The joint venture.

* * *

THE WITNESS: On behalf of the joint venture, I said.

* * *

BY MR. FRIEDLANDER:

Q. What did you mean by "company owned motel site"?

A. Well, that would have had to mean any inn that was built by the parent company.

Q. You couldn't stop them? A. No, sir.

* * *

Q. In the franchise protection you are not protected against the company's own motels? They can still build them; is that right? A. As far as I know, they can.

* * *

Q. * * * And during that time you had had a lot of dealings with Mr. Wilson, had you? [121] A. That's right.

Q. You knew him personally, didn't you? A. That's right.

Q. Is that the reason you wrote the letter? A. I suppose so.

Q. Do you recall whether or not you talked to Mr. Perper about this letter, sending it out, before you sent it out? A. I don't recall talking to Mr. Perper about it.

Q. I notice you didn't send him a copy. Did he see it? A. I don't know.

Q. Weren't you primarily employed by him? A. When you say "primarily," I was in public accounting practice. He was a client.

Q. Well, he was your best client, wasn't he? A. No, sir.

Q. Didn't you have more business from him than anybody else? A. No, sir.

Q. Well, were you at that time closer to Bernard Margolius than you were to Mr. Perper? A. At what date? July?

Q. Nineteen fifty-nine. A. No. I would say no at that time.

* * *

[126] Q. Did there ever come a time before June 6th, 1959, when you knew that firm arrangements had been made as to the joint venture? [127] A. I think I had concluded that at some time before this letter of June 6th, 1959.

Q. I don't want to interrupt you, but I would like to get it as clear as I can. What happened that made you feel that the arrangements were firm? A. We had already discussed the various promoters' interests, and we had discussed how much capital we thought might be needed over and above financing and we had discussed means of getting a first mortgage, and —

Q. When had you — A. — the option for the ground —

Q. Excuse me. A. — had been taken, and I think at this time had been renewed once or twice.

Q. What was it — what meeting was it — that made you feel that these agreements had been reached? A. I think it was a combination of several meetings or several times that members of the group got together.

Q. Did you not — A. The —

Q. Excuse me. I'm sorry. A. The first time I had an impression that some arrangement pertaining to this had been reached was at this first meeting I had attended at Mr. Margolius's office. [128] Now, actually, I don't think any formal document had ever been entered into much later than that.

Q. Well, irrespective of formal documents, did you know that firm commitments had been made between the people to the joint venture before Weiss and Broidie went to Memphis? A. I think there were tentative commitments —

Q. What were they?

* * *

A. The agreements were that this motel would be promoted by the people who I think I have enumerated before as 50 per cent of the ownership, and the other 50

per cent would be owned by investors, but I don't believe that before this letter was written that it was known that a franchise was going to be obtained definitely, and the whole deal was based, of course, on a franchise being obtained.

Q. Now, was the deal predicated upon a franchise being obtained from Holiday Inns of America? A. Yes.

Q. And if you could get a franchise for this particular site from the Holiday Inns of America you had an otherwise [129] firm deal? A. Yes.

Q. That was your understanding? A. Yes.

Q. Did you understand if you had a firm deal and you did get a franchise and a motel was erected on the site that there would be this protective arrangement for the franchise? A. That's part of the franchise agreement — it's not part of the franchise agreement as such but — I mean the protection is not, —

Q. Yes. A. — but I believe there is the provision in there that if Holiday Inns of America deems it necessary for another Holiday Inn to be built that they would call on the franchise holder to build it.

Q. Unless they built it themselves? A. Unless they built it themselves.

Q. I understand that. Now, when Broidie and Weiss came back and they reported to you that Kemons Wilson had confirmed to them or said to them that they would hold the franchise for this particular site together with the area, did you understand what they meant? A. I understand what they had understood, —

Q. Yes. [130] A. — because they told me that.

Q. Yes. And that's the reason you wrote the letter, from what they said? A. Right.

Q. But you never did talk to Mr. Perper about this? A. No.

* * *

[131] Q. Are you telling us you sent this letter out without talking to Mr. Perper? A. Yes.

Q. And you are saying that you never told him about the letter? A. No; I'm not saying that.

Q. When did you tell him about it? A. I think it came up, as a matter of fact, when the letter from, I believe, Mr. Wilson came in that this was a site franchise and the area was not included.

Q. Now, did you tell Mr. Broidie and Mr. Weiss about that letter from Mr. Wilson? A. I presume I did.

Q. Why do you think that you did? A. Well, because I think it was pertinent for them to know it, because it was at their request that I write to [132] Kemons Wilson to confirm what their understanding was.

* * *

[133] Q. Your recollection is when you got this letter from Kemons Wilson that you let Mr. Broidie or Mr. Weiss know about the reply? A. Yes.

Q. Now, what did they say to you? A. I don't recall the conversation.

Q. Do you recall talking to them about it? A. Well, we had been discussing many things at many different times, when they came in the office.

Q. And you — A. They would come in the office quite often.

Q. What would be the reason for visiting your office quite often? What were they doing with you? A. The construction — well, at that time it was not yet the construction, I don't believe. It was plans and specifications. It was financing. It was investors. It [134] was the handling of the funds of the partnership. Various and sundry reasons, besides which, as I recall, they were one of the people who had to sign, that is, Mr. Weiss or Mr. Finkelstein, and myself.

Q. Had to sign what? A. Had to sign checks.

Q. Oh, I see. Did you ever do any accounting work for any of those four men? A. Yes. I've done accounting work for Mr. Weiss and Mr. Stolar.

Q. And when did you first talk to Mr. Stolar? A. And, as a matter of fact, I think I did work — I know I did work for some corporations which all four of the plaintiffs were in.

Q. When did you start doing this work? A. I don't recall, but I would guess in 1957 or 1958.

Q. So, it would have been long before this? A. Yes.

Q. A year or two before? A. Yes.

Q. And you were friendly with them? You knew them?
A. Yes.

Q. When you got this letter which indicated they [135] weren't going to have the area, did you understand what it meant? A. Did I understand what it meant?

Q. Yes. A. I think so.

Q. Did it mean they wouldn't have the protection of the franchise? A. I don't know as to whether it would not mean the protection of the franchise. It simply meant, I thought, that — not only thought, but I think it said so in so many words — that this was a site franchise and was not an area franchise.

Q. Well, have you ever heard of an area franchise or had you ever heard of an area franchise in 1959 from Holiday Inns? A. I don't believe they were giving area franchises at that time, although I didn't know that because the Richmond deal, at that time it was entered into, which I think was in, I believe, '58, —

* * *

[172] MR. GALIHER: May we have that question read back, the full question, if you please?

(The reporter read the question as follows: "When Mr. Friedlander was examining you, you referred to Mr. Frank Perper's right to protect his franchise. When did he acquire a right to protect his franchise?")

THE WITNESS: I think that's inherent in the franchise agreement.

BY MR. HILLAND:

Q. What franchise agreement? A. The franchise agreement for this site.

Q. Shirley-Glebe? A. Yes, sir.

[173] Q. Is there any writing covering this alleged right to protect his franchise to which you have referred, other than the franchise agreement? A. I don't think the

franchise agreement gives you specifically the right. I think it's something which is just by policy of the Holiday Inns of America.

Q. And from what source did you acquire your knowledge about it? A. I've seen many of the Holiday Inn franchises, and, in fact, I have several of them in my name.

Q. Well, does Frank Perper, to your knowledge, have any writing to that effect other than the franchise agreement relating to Shirley-Glebe motel? A. I don't know.

Q. Have you ever seen any? A. I have never seen any.

* * *

Q. When did you hear from Mr. Perper? A. I would say within the last three months, probably.

Q. What did he tell you? [174] A. He said that the builders, McShain, — I think they're primarily from Philadelphia — had applied for a franchise at the Holiday Inns of America, and the Holiday Inns of America had referred the matter to Mr. Perper to ask him if he had any objection to McShain building a Holiday Inn in Washington and Mr. Perper did have an objection because he did not want to have another Holiday Inn built by an outsider in the City of Washington.

* * *

Q. Did he tell you what officer or employee of Holiday Inns had so informed him? A. I do not recall whether it was Kemons Wilson, Jeff Mann or Jack Ladd, but I believe it was one of those three.

* * *

[179] BY MR. HILLAND:

Q. Now, you acquired your interest in that motel through Frank Perper, did you not? A. No, sir.

Q. Through whom did you acquire it? A. Independently as a partner of Frank M. Perper.

Q. When did you become his partner? A. I became his partner, I think, shortly after — I suppose it was some time around the time we started discussing the Shirley-Glebe motel.

Q. Do you have a written partnership agreement with him? A. No, but everything that Frank has been doing since then I'm a partner in.

Q. The same as your brother, Bernard Margolius, was prior to that time? [180] A. I don't know what arrangement Bernard Margolius had.

Q. You prepared the tax returns for them, didn't you, as partners? A. They were in individual deals together.

Q. Well, didn't you prepare a partnership tax return for them? A. No, sir. I prepared partnership tax returns for each separate joint venture, in which each of them was a partner.

Q. In each project? A. In each project.

Q. That's right. So, you prepared multiple partnership tax returns? A. Yes, sir.

Q. And did you keep the books for those partnerships? A. My office did; yes, sir.

Q. After Bernard Margolius learned about this Holiday Inn at Winchester, he called you on the telephone, didn't he? A. Well, he spoke to me on the telephone. I'm not sure — he testified, I think, yesterday, if my recollection is right, that he spoke to me about a conversation —

Q. I'm not — A. — which I —

* * *

[184] Q. When do you state that the breakup between Frank [185] Perper and Bernard Margolius occurred? A. Well, it had to be some time in '59, just prior to this conversation.

Q. The Shirley-Glebe motel project was in its course then, was it not? A. In the summer; yes.

Q. Yes. A. In the summer of '59 it was; yes.

Q. When did the construction on it begin? A. I think in late '59.

Q. And when was it completed? A. Oh, June or July of '60.

* * *

Q. How is the partnership you now have with Frank Perper different than the partnership your brother, Bernard Margolius, had with him? A. I don't have a partnership with Frank M. Perper except as to particular, specific joint ventures. Mr. Perper [186] has the right, and we understand one another, that if he wants to make a deal tomorrow and exclude me from participating that's his privilege.

* * *

**EXCERPTS FROM DEPOSITION OF
FRANK M. PERPER**

[Washington, D. C., March 15, 1963]

* * *

[192]

FRANK M. PERPER

* * *

DIRECT EXAMINATION

BY MR. FRIEDLANDER:

Q. Would you state your full name, sir? A. Frank M. Perper.

Q. And your address? A. My address is the Towers Apartment, 4925 Collins Avenue, Miami Beach.

* * *

[193] Q. And I am talking now about the motel which was built at Glebe Road and Shirley Highway. A. Yes, sir.

Q. Do you recall a meeting in Richmond, Virginia relating to that motel? A. I do, sir.

Q. Can you fix the time of that meeting? A. I think it was around the first week of April, --

Q. Of 1959?

* * *

[196] Q. Tell us what was said, in substance? A. What was said at this meeting?

I was introduced by -- Bernie introduced me to these men, all four, and they said to me that they know of a piece of ground on the Glebe Road, on Shirley Highway.

I had told them that I had seen this ground about two

or three years previous to '59, which would bring it to '56 or '57, and I turned it down.

The heirs of this piece of ground came over to the hotel to see me, came there without any appointment whatsoever, and they came there with a broker.

* * *

[198] Q. The question is: You were going to tell us what happened down in Richmond. A. Now, down in Richmond, during this conversation, [199] I had told these boys I had seen the ground and I wasn't interested; the parent company wasn't interested, and I did tell them that I would make a survey probably for two or three weeks with the motels that's already in existence on Shirley Highway or above, around Route 50, and I would let them know.

There was nothing spoken about anything else, outside of meeting these boys there, and I don't think the conversation that we had lasted more than about 20 minutes to a half hour.

* * *

[201] Q. Now, when did you next see them? A. The next time --

Q. I'm speaking now of Weiss, Finkelstein, Broidie or Stolar. A. I think I saw them the following Saturday morning.

Q. Where? A. In Mr. Margolius' office.

Q. And had you made a survey at that time? A. Well, I was out on the Shirley Highway, I would say, about twice.

I had known Mr. Stouffer, formerly the manager of the Willard, and he was operating that motel across the river.

Q. The Charterhouse? A. No. He was operating the --

MR. GALIHER: South Gate.

MR. SAVAGE: South Gate.

THE WITNESS: The South Gate.

BY MR. FRIEDLANDER:

[202] Q. So, you had visited the site twice between

the meeting in Richmond and this meeting in Mr. Margolius's office? A. Yes; I was there twice.

Q. And who was at this meeting in Mr. Margolius's office?

This is Saturday following the Richmond meeting?

A. Yes; the following Saturday.

Q. Yes. A. To the best of my memory, it was Bernie Margolius and Weiss and Finkelstein.

I think Mr. Deckelbaum was in his office next door and I think he came to the door and he walked back again. Now, I'm not sure.

Q. How about -- A. To the best of my memory.

Q. -- Stolar? A. I don't think Stolar was there.

Q. Weiss and Finkelstein, but not Broidie and Stolar? A. I don't think so.

Q. That's your best memory of it? A. Yes, sir.

Q. Now, what happened at this meeting?

Can you tell us? A. This meeting was a very short meeting, too.

[203] Q. What happened there? A. The meeting there was whether I liked the location and how I thought a Holiday Inn would go there.

I said, 'I want to give it a couple more weeks, before I would want to make sure, because when you check a motel one week they may be busy and the following week they may be half empty. So, I want to give it a couple more weeks' check.'

And that's all I can remember at this meeting. Nothing else was said.

* * *

[204] Q. Now, did you at that time, at the time of this meeting on Saturday in Margolius's office, have a reservation of the area or any sort of an arrangement for the metropolitan area of Washington with the parent company, as you call it? A. No. The only thing I can tell you that is: we're earmarked, -- what they call earmarked -- and I have earmarked here 16 towns that I'm earmarked for -- and when you're earmarked with Holiday Inn of America no one else can come in and get that franchise but the person that's earmarked.

Now, if he's not going to take it, you're supposed to call them up, or after 60 days, and say, 'I'm through with that town: I don't want it,' and then they take you off being earmarked.

Q. When were you earmarked for the Washington area? A. Oh, I would say about '58.

[205] Q. And how long did it last? A. I kept renewing it all the time.

Q. And how was that done? By letter? A. No, sir.

Q. By word of mouth? A. Yes, sir.

Q. Telephone calls? A. No, sir.

Q. Just when you would meet them? A. That's right. Just when I would go down there on my board meetings or something.

* * *

[206] Q. Would you give us, as briefly as you can, any additional facts to explain your understanding with Holiday Inns of America for Holiday Inns in the Washington, D.C. area? A. I just don't understand the question. What do you mean -- give you facts?

Q. Well, you have told us that you have been what you called earmarked for certain places. A. Yes, sir.

Q. Now, can you give us any further information concerning your understanding with Holiday Inns of America concerning this earmarking or restriction or commitments for the area? A. Just being earmarked.

Q. Nothing else? A. That's all we call it.

Q. Would it be incorrect to say that you had an understanding with Holiday Inns of America as to the development of future Holiday Inns in Washington, D.C.?

A. What date and what year?

Q. Well, let's say in August of '61. A [207] * * * That would be correct, yes, sir.

* * *

[208] Q. So, coming down to cases, when you got the franchise for the Holiday Inn at Shirley Highway and Glebe Road, you also obtained a protection sort of or protective arrangement? A. Yes; somewhat.

* * *

[209] Q. Was the protective arrangement which arose out of the site of the franchise at Shirley Highway and Glebe Road in writing or oral? A. No, sir. They don't give it to you in writing, sir.

Q. It was not in writing? A. No, sir.

Q. Was it oral? A. Well, they don't tell you that. Here's what happens down there: If somebody tried to build and you hear that they're going to build near you, and you go down there and see Mr. Ladd and say, "Well, here, he may hurt me; he's on the same road; he's eight miles from me, or six miles," I don't think they'll let them build six or eight miles from you.

But if you're on another -- like where Krisch is building in Alexandria, which is not on the Shirley Highway road, -- and I don't think he's over four miles from the Shirley -- they'll give it to him.

* * *

[212] Q. *** You have an arrangement or understanding, we'll say, of some kind, oral, with the parent company, -- A. Right, sir.

Q. -- Holiday Inns of America, -- A. Right.

Q. -- and under that they call upon you to approve or disapprove of applications for other sites -- A. Yes, sir.

Q. -- in this area? A. Yes, sir.

Q. Now, what was it that you had gotten from the Holiday Inns of America that gave you that power of -- A. They give it to anybody where --

Q. I know.

How did you happen to get it? A. They give it to anybody that's got a motel in a certain town, --

Q. Yes. I understand.

What motel -- A. -- and they give you protection -- any motel.

Q. What motel do you have from which this protection arises?

Which motel is it that gives rise to the protection?

[213] A. The motel at Catholic Shrine.

Q. Now, the Catholic Shrine Motel is the basis for your protection? A. Yes, sir.

Q. Now, did Shirley-Glebe site give you any protection? A. Did it give me any protection?

If somebody tried to build four or five miles near there, it would give me a protection; yes.

* * *

[215] Q. And you have a second meeting the following Saturday, -- A. Right, sir.

Q. -- in which you again have a very short meeting, and you reach no conclusions? A. That's right, sir.

Q. Now, did you have further meetings -- A. Yes, sir.

[216] Q. -- in this motel?

I am speaking now of the Shirley Highway. A. Yes, sir.

Q. And when was the next meeting you had? A. Before we had the next meeting it was about, I would say, a good ten days from the time I was over in Mr. Margolius's office, or probably two weeks, and Mrs. Perper, myself, Alan Sahm had been out to the Shirley Highway quite a number of times.

I called Bob Weiss up. I says, "Bob, my survey that I had made shows me that I think that we can build a hundred rooms, or probably a hundred and six rooms," -- we decided on a hundred, but then we changed it and went to a hundred and six -- but then I said the ground is too dear for that amount of rooms, that we would have to find out just about how many rooms that that particular ground would carry.

That is my survey with every motel that I build. Bob says, "Well, do you like it now?"

I says: "Yes."

Now, this is about around the 25th or the 26th of April.

We had a meeting over at Mr. Weiss's office, and I think there's where we discussed --

Q. Who was there?

[217] Would you mind me interrupting? A. Yes, sir.

I think Mr. Stolar was there; Mr. Weiss was there, and I think Mr. Finkelstein was there, and myself.

* * *

A. What took place there -- in the meantime I had [218] checked on those men, because I had never met them before.

Q. Would you just tell us what took place there, please? A. Yes, sir.

Q. I would appreciate it. A. And we decided to talk about the motel to be built there, and I think Mr. Weiss asked me at that time where do I get my mortgages.

I told him, "I get a few from Prudential."

Then I think Bob come out, and he says that they wanted, I think, 30 per cent of the deal, of the 50 per cent, and 20 per cent can go to Mr. Margolius or myself, and at that time I says, "Bob, you know that I will not go to Mr. Margolius's office," because at that time, before I went over there, Bob had said to me about meeting in Bernie's office. I says: "I won't go there. I don't want to have nothing to do with Bernie, and I don't want to go in business with Bernie any more."

I says: "We're already about to build down at Winchester, and Mr. Margolius is not going to be in that deal, and we broke up right after the Willard meeting about Durham."

Q. This is what you told Mr. Weiss? A. Yes, sir.

Q. At this meeting? [219] A. Yes, sir.

So, naturally, Weiss then said -- I says, "Well," I says, "you ought to have it on an even keel, that Mr. Savage, who does your books and all -- he could be the accountant, and you say to me that you want Mr. Margolius to have 10 per cent of this deal, and Mr. Margolius told you to give me 10. Now, I don't want the 10, but I will have Harold and Alan Sahm, Henriette's son, be the co-partners, but I will help you maneuver this deal and put the deal together."

Harold's in Miami. He can't do it. Alan Sahm knows very little about putting a deal together, and I do put deals together for some of these Holiday Inns.

And that was all right.

He said to me then --

Q. Wait a minute. When you say he said that was all right, are you saying what Mr. Weiss said to you? A. Yes.

Q. He said that was all right? A. He said that was all right.

Q. To have -- A. As long as --

Q. -- Sahm and Harold Perper -- A. Harold Perper --

Q. -- as part of the partnership? [220] A. And Bernie Margolius was to get 10 per cent of it, and Mr. Savage was to get five.

Then he started to tell me that he thought that his company could build this for less money than any other builder.

"Well," I says, "that's fine, and in the meantime," I said, "let me also find out some other builders who could build it," and I did.

Q. Who did you get? A. I called Bob Morris up, because I had heard that Bob Morris had somebody that was working with him and going to build office buildings or warehouses.

Q. Well, you called Bob Morris up? A. Yes.

Q. Who else did you call? A. At that particular time?

Q. Yes. A. No one.

Q. Just Bob Morris? A. Just Bob Morris at that particular time.

Q. Did you get a price from him? A. No. Bob couldn't give us a price.

Q. Did you get any sort of a cost-plus offer from him? [221] A. No.

Bob Weiss has said to me that this young fellow is going to build is with some architect, somebody's office, --

Q. Now, what else did you talk about? A. -- and there's where I could find him, and for me to talk to him, because he's in the furniture business.

Q. This took place after your meeting that you're speaking of? A. Yes.

I --

Q. Let's see if we can stay at the meeting now. A. Yes, sir.

Q. You have told them how you wanted to arrange it. Did you tell them what the terms would be?

You have already said who the partners would be, --
A. Yes, sir.

Q. -- that is, the promoting partners? A. Yes, sir.

Q. Did you tell him what other arrangements would be made? A. Well, he told me. I didn't tell him.

Q. What did he say? A. He said Bernie Margolius would be the lawyer, and they would be the builder.

[222] Now, he said to me, "You'll put the deal together for us."

Q. All right.

* * *

[223] Q. And then did you have a meeting after they got the option? A. Yes, sir.

Q. And where was that? A. One evening in Bob Weiss's office.

Q. Do you know what time it was or who was there? A. It was after dinner.

Q. And who was there, Mr. Perper? A. Oh, at that meeting I think all the four plaintiffs was there.

I think that Mr. Margolius was there. I can't say that he was.

And we were talking then about who was going to build it, and who was going to supervise the job while it was being built, and at that time I think they already had spoken to an architect.

Q. Do you remember who that was? A. I don't know his name. He's --

Q. Were there any standard instructions given by the parent company as to how these motels should be built?

A. Beg your pardon.

[224] Q. Were there any standard instructions as to the exterior appearance or elevation of these motels?

A. Well, what they do is preliminaries. They send it down to Holiday Inn for approval.

Q. Holiday Inn had to approve it? A. Yes, sir.

Q. Would that be after they had decided to give you a franchise or before? A. No. They send it -- we got the okay on the franchise, I would say, in the early part of May.

Q. You got the approval of the franchise in the early part of May? A. Or June, rather.

Q. June? A. June.

Q. Who did you get it from? A. I think, if I can remember right, I spoke to Jack Ladd, and he asked me whether I got a telegram. It was sent to me in care of Bernie Margolius' office, signed by Bill Walton.

I told him: "No." I told him if it was mailed to me that Mr. Margolius must have it in his office.

Q. The telegram? A. That is correct.

Q. Well, did they send you a duplicate of it? [225]
A. They did not, but we got a letter, I think, right after that.

Q. Can you give us some idea about the time of the letter? A. Well, I think we got a letter some time in the early part of October.

* * *

Q. When did you realize that you had the franchise in the bag, so to speak, definitely? A. I had it. I had the franchise, by name, down there, earmarked for the franchise, in '58.

Q. For the Washington area? A. No. For Arlington.

Q. You had your name in '58 down there for Arlington? A. Yes, sir, and earmarked for Washington.

* * *

[228] Q. * * * What business were you in before 1950? A. Hotel business.

Q. And where did you operate?

Did you operate a hotel? A. Operated quite a number -- 18 of them.

Q. Eighteen.

Would you tell us where they were located? A. Well we operated the Marlyn Hotel in Philly.

Q. Philadelphia? A. We operated the Loraine in Philly.

[229] We operated Zieses in Philly.

We operated the Windsor in Philly.

We operated the Rittenhouse in Philly.

Q. Excuse me. You are talking about Philadelphia. You don't have to give us the names, but just — A. The President in Atlantic City.

Q. Atlantic City. All right.

Were those hotels operated on leases or did you own them? A. Pretty nearly all of them we leased.

Q. Leased.

And how long had you been in the hotel business? A. You would know my age, if I tell you that.

Q. Well, we'll keep it a secret. A. All right.

I would say 43 years, 44 years.

Q. And prior to that what business were you in? A. Working in hotels.

Q. So you have been in hotels practically all your life? A. Since I have been 14 years old.

* * *

[230] Q. Now, from 1950 through 1957 did you go into any motel or hotel deal in which Bernie Margolius was not a partner of yours? A. No.

* * *

[231] Q. Under what arrangements did you give him five per cent of the deal? A. Because he was going to be the attorney for it.

Q. And this was a payment for legal services he was to render? A. That's right, sir.

Q. Did you give him interest in other motels for the same reason? A. Yes, sir.

Q. Would you say that you and he had an attorney-client relationship rather than a partnership? A. I would say he got his percentage for being a lawyer wherever I wanted to -- what ever amount I wanted to give him each deal.

Q. Then he was not a partner? A. Never a partner.

* * *

[239] Q. Now, going back to this, I think we have talked [240] about the Richmond meeting, a meeting in

Margolius's office, another meeting in Weiss's office, and then I think you talked about an evening meeting --

A. Yes, sir.

Q. -- in Weiss's office. So, we have talked about four meetings.

Were there any more before you agreed finally on all the terms? A. When you say "four meetings", you are speaking now of the Richmond meeting also?

Q. Yes. I count that one, -- A. All right.

Q. -- and two the following Saturday, -- A. At Bernie's office.

Q. -- and ten days, approximately, later in Mr. Weiss's office, and then a second meeting after dinner in Weiss's office. A. Yes, sir.

Q. Now, did there come a time when you had a meeting and you finally determined all the terms of the joint venture? A. I wasn't to that meeting.

Q. You had nothing to do with that? A. No, sir.

* * *

[241] Q. Now, what was your relationship with Mr. Margolius from the time of the Richmond meeting on through the time when you were appointed one of the managing agents for the motel? A. Very bad.

Q. Was your relationship -- A. -- when he would see me near the Ambassador or anywhere, I had nothing to do with him.

Q. In other words, you were not talking to him except in business matters? A. Oh, we were talking -- we had a meeting, I think, at the Ambassador, right after they started the Shirley [242] deal, or I would say it was in 1960, and there was a meeting on, I think, Richmond, talking about leasing Richmond.

* * *

[243] Q. Would you say that prior to October 1959 the joint venturers, as promoters of the joint venture, had reached an agreement on how they would handle this motel? A. Just what do you mean -- how to handle it?

Q. Well, what their interest would be, what they

would do, what their obligations were, what their rights were. A. Oh, yes. We had a meeting --

Q. What is your understanding -- A. We --

Q. -- of the arrangements between the parties? A. That arrangement -- we were talking about that the night after the fourth meeting when I was in Mr. Weiss's office, when I -- we arranged everything and we spoke about Bob Morris and this young fellow in their [244] office, and it seems that they must know who he was, because they had already gone to the architect, --

Q. Was there -- A. -- and -- I just want to finish -- the windup of that meeting was I had called Myrtle Beach around 11 o'clock at night and found out the price that Keith Jones wanted for the job, and I think they decided after that to give it to Keith Jones.

Q. Who decided to give it to Keith Jones? A. I don't know. I don't know.

Q. Did Keith Jones make a written bid? A. I don't know.

That was up to the attorney.

That was up to Mr. Margolius to draw the papers. I don't know just how they did it.

* * *

[245] Q. And when Mr. Weiss and Mr. Broidie had gone to Memphis -- A. I knew nothing about it. I didn't -- I was back in Miami until Decoration Day. I knew nothing about them going down there.

Q. There was no telephone call -- A. And the only time -- and the first time -- I knew it was when I walked into one of our auditors, and the auditor said that Mr. Weiss just picked up a check for expenses of going to Memphis.

I then come out and asked Julian Savage -- I says, "Julian," I says, "did you do anything about it?"

He says, "No; I didn't know anything about them going down, but what I do know is that they came to me in the early part of June, Mr. Weiss, and they told me what [246] happened down there with Mr. Kemons Wilson.

He says, "On the strength of that," he says, "what they told me, I wrote a letter."

Now, this is in August.

He was -- Weiss was down there in May, but they picked up their check some time in August, and that's the first time I knew that there had been a letter sent down to Memphis, when the girl told me that there was a check.

Q. Had you applied for a franchise? A. Yes, sir.

Q. When did you apply for it? A. I applied for it -- I think I must have applied for that right after they put their deposit down for the first option.

Q. I was under the impression -- A. When I say --

Q. -- that that occurred in April or May. A. That's right. That's right.

Q. Well, how did you apply? In writing? A. No, sir.

Q. Orally? A. Orally.

Q. Who did you apply to? A. Jack Ladd.

Q. And how did you do it? [247] A. By telephone.

Q. You got on the phone and you called him and applied for it? A. No. What I said to Jack Ladd was -- I said, "Jack, they're putting down a deposit on the option, and," I says, "they're going to try to get zoning and all, but I don't want to pay for this franchise yet," which you've got to put up ten thousand, "until we're sure that we're going to build this motel; but you can put me on record that we want the franchise."

Q. Who did you mean when you said, "We want the franchise?" A. Well, myself.

Q. You don't refer to yourself as "we", do you? A. Well, I don't, but I did.

Q. Who did you mean when you said "we"? A. Myself.

Q. You want us -- A. I was going to put Harold's name and myself, but then I had changed -- I had changed it to myself at the time.

Q. You want us to understand when you said "we" you meant you and Harold? A. At that time I was going to put Harold's name down and myself.

* * *

[248] Q. I understand, then, you had applied in April, the end of April, for this franchise by telephone? A. I was earmarked for it.

* * *

[249] Q. You are sure you told them they wouldn't have the franchise? A. I told them the franchise is under my name and it's not going to be under anybody else's name.

* * *

Q. Well, now, was any change made on the franchise -- [250] A. Yes, sir.

Q. -- as to the location -- the first franchise that came in? A. As to the location?

Q. What it covered. A. No, sir. No, sir.

* * *

Q. Didn't you get a franchise sent to you by Ralph Deckelbaum which was changed by some eradication? A. No, sir.

Q. You said "no"? A. No, sir.

I say I don't know if anybody made any change, and they better not make a change on a franchise without the parent company doing it.

* * *

[267] Q. Now, when Mr. Friedlander was examining you, did you say that at the Richmond meeting you were not on speaking terms with Bernard Margolius? A. At the which meeting, sir?

Q. At the Richmond meeting. A. No. I wasn't talking to Bernie. I haven't spoken to Bernie from about March of 1959 on, that is, I may have spoken to him on the telephone; I may have wrote him some letters, but we weren't on good terms. We broke up in March, after what he did down in Durham.

Q. March when? A. Of '59.

Q. And what did he do in Durham? A. Well, do you want me to tell you the story?

If you do, I 'll tell it to you.

Q. I asked you what he did in Durham. A. I says

the Durham motel. That's when we broke up, on account of the Durham motel.

* * *

[303] BY MR. HILLAND:

Q. Harold Perper received your interest in that motel, did he not? A. Right from the start.

Not my interest. His own interest.

* * *

[304] Q. Mr. Perper, to your knowledge, has Harold Perper ever met the plaintiffs in this case -- Mr. Weiss Mr. Finkelstein and Mr. Stolar? A. I don't think so.

Q. It was as a result of your negotiations with these three gentlemen that Harold Perper received in interest in the Shirley-Glebe motel, was it not? A. The only answer I can give to that is when they approached me about trying to put the deal together I told them exactly then that I don't want to go in this deal, but if they wanted to give it to Harold and give it to Alan Sahm, fine.

* * *

[308] Q. Now, if an agreement was not reached between you and the plaintiffs in this case at the meeting in Richmond in April 1959, when was the agreement between you and the plaintiffs reached -- when and where? A. After I looked at the site for about two or three weeks, I made up my mind that I think they can stand a motel, and when I spoke to Bob Weiss and he asked me, "Did [309] I check it?" I says, "I sure did."

Q. All right. Where -- A. Over at Bob Weiss's office.

Q. And when? A. And that was during the third meeting.

Q. When? A. Oh, I would say around -- that particular meeting I would say around -- I don't know -- 10th, 11th, 12th of April.

Q. Who was present at that meeting? A. Bob Weiss and Finkelstein and Stolar.

Q. Anybody else? A. I didn't see any -- there may have been. I don't remember if there was.

Q. You mentioned that was the third meeting. A. Yes, sir.

Q. When was the second meeting? A. In Mr. Margolius's office.

Q. When? A. The following Saturday.

Q. Who was present? A. Mr. Margolius, Mr. Weiss, Mr. Finkelstein, Julian Savage, myself, --

Q. Who else? A. -- and I don't know whether Dec-
kelbaum walked in [310] from his office into Mr. Mar-
golius's office, or standing at the door or not. I don't
remember that. He might have been there.

* * *

[313] Q. Did you ever check the occupancy of the
South Gate Motel? A. One o'clock in the morning and
five o'clock in the morning, on about three or four dif-
ferent occasions, between the time that I was in Rich-
mond and around the 26th of April.

Q. And what did you find? A. The South Gate we
found to be about 70, 80 per cent rented. Of course, you
can't tell by cars. There may be four people in the car;
they would take two rooms. So, you've got to just about
guess what's there by counting your cars.

Q. Did you furnish any of that information to Julian
Savage? A. I don't know. Maybe I did. I don't remem-
ber now.

Q. Did you tell him the information you had been able
to obtain regarding the South Gate Motel was that their
recent occupancy rate had been approximately 90 per
cent? A. I might have said that to him. I don't remem-
ber.

Q. And did you tell him that the operators of South
Gate Motel anticipated an average occupancy rate of 70
percent for the year? A. I might have told him that,
too. I don't remember.

[317] Q. Did you fill out a written application for the franchise for the Shirley-Glebe motel site? A. I don't have to fill any out. I'm --

MR. GALIHER: Answer his question.

THE WITNESS: Do you want me to make that clear?

MR. GALIHER: Answer his question.

THE WITNESS: No, sir.

* * *

[318] Did you write Bernard Margolius and tell him you were going to stop the Kriss Holiday Inn or Krisch Holiday Inn in Alexandria? A. I might have.

Q. Did you try to stop it? A. Yes, sir.

Q. What happened? A. Well, the inn --

Q. Did you stop it? A. No, sir.

* * *

[319] Q. Did you stop one in Rosslyn? A. Did I stop one in Rosslyn?

Q. Yes. A. No, sir.

Q. Did you try to? A. I got the franchise.

Rosslyn is not on the Shirley Highway. It's not on Route 50.

Q. How about in Clarendon? A. The same as Krisch in Alexandria.

Q. Did you stop one in Clarendon, Virginia? A. Clarendon, Virginia?

I don't know where Clarendon is.

Q. Did you stop one anywhere in Arlington? A. I just got done telling you I stopped one in Arlington.

Q. Where? A. Right near the City Hall somewheres in Arlington.

Q. You mean near the Court House? A. I think so; yes, sir.

* * *

[320] Q. Have you ever told anyone that you were the managing venturer of Shirley-Glebe motel? A. Tell anybody?

I never told anybody anything I was connected with that, manager or anything.

* * *

[324] Q. What motel, if any, did you build from 1957 to July 1959 in which Bernard Margolius did not have a joint interest with you? A. I didn't build any then that he didn't have an interest with me.

* * *

[329] Q. Now, if you were a promoter in Richmond Number 1, how do you distinguish that from Shirley-Glebe motel in which case you say you were not a promoter? A. Well, it so happens that I've been giving my [330] children, due to my age, in any motel that I build in the last few years -- I give it to them. I give Martin and I give Harold. I may be the promoter, but I give it to them for that reason.

* * *

[334] Q. Mr. Weiss and Mr. Finkelstein or Mr. Weiss and Mr. Stolar came to Mr. Margolius in the first instance, did they not? A. I suppose so.

Q. And then he called you? [335] A. Yes, sir.

* * *

[347] Q. Has Harold Perper ever been at a meeting of the members of the Shirley-Glebe joint venture? A. No, sir.

* * *

[352] Q. What did you say was the first knowledge that you obtained that Mr. Weiss and Mr. Broidie went to Memphis in connection with the Shirley-Glebe franchise? A. The first time I heard about it was in August.

Q. From whom? A. When I saw -- when my book-keeper, one of our accountants there -- they had a check made out, and they told me that: "Mr. Weiss was just over here and picked up the check," and they said it was for an expense check.

I then went into Mr. Savage's office, and I asked Mr. Savage what it was for, and he said that they went down to Memphis in May.

Q. And who told you that they went down there? A. Who told me they went down in May?

Q. Yes. A. Mr. Savage, knowing that they made a check out. So, evidently he must have known it.

Q. How did you know it was in May? A. How did I know it was in May?

I learned that when I spoke to Mr. Savage.

* * *

[353] Q. And what was your first knowledge of the letter Mr. Savage wrote to Holiday Inns on June 6th, 1959? A. I didn't know anything about that letter until recently.

Q. When? A. I would say when we were in Mr. Galiher's office.

* * *

**EXCERPTS FROM DEPOSITION OF
WILLIAM JEFFREYS MANN**

[Memphis, Tennessee, June 27, 1963]

[2] WILLIAM JEFFREYS MANN

* * *

DIRECT EXAMINATION

BY MR. FRIEDLANDER:

Q. Would you state your full name? A. William Jeffreys Mann.

Q. Are you an officer of the Holiday Inns of America? A. Yes. I am assistant vice president in charge of [3] franchise sales.

Q. How long have you held this position? A. This title, approximately two years.

Q. This takes up to about 1961? A. Yes, sir, about then. I think it was in June or July of 1961.

Q. Prior to that time, were you employed by the company? A. Yes, sir.

Q. What was your position then? A. I would say administrative assistant, franchise department.

Q. What sort of work do you do now? A. Handle franchise sales.

* * *

[4] Q. Do you recall issuing any franchise to Martin Perper? A. Yes, sir.

Q. And may I call your attention to these franchises in the metropolitan area of Washington, D.C., one to be erected in Georgetown. Do you know whether that has been issued yet? A. No, sir. I don't recall. I don't believe it has been.

Q. College Park? A. Yes, sir: it has been.

Q. Greenbelt, Maryland? A. Yes, sir: it has.

Q. Andrews Air Force Base? A. Yes, sir.

Q. And Seven Corners -- that's Virginia? A. I am not sure. The reason I say I am not sure is that we, of course, have a number of franchises, and most [5] of them carry different names and connotations than these, some of which are in Frank Perper's name and some in Martin Perper's name. The bulk of the ones you have mentioned there are in Martin Perper's name, I believe.

Q. Why would you issue some in Martin Perper's name and some in Frank Perper's name? A. Merely applications.

Q. Who is the party that you deal with primarily on these applications, Frank Perper or Martin Perper or both? A. Both.

Q. And is there a difference between them, or are they handled in the same way? Are they considered the same person? A. No, sir, they are different.

Q. And they have separate financial statements? A. Yes, sir.

Q. Does Frank Perper have any area control or area protection in the metropolitan area of Washington? A. No, sir.

* * *

[6] Q. I show you a photostat to refresh your recollection: just look at it and see if you remember that letter. That was sent by you, was it not? A. Yes.

Q. And that would have been when you were assiting Jack Ladd? A. Yes, sir.

* * *

Q. Now, at that time, did you have any understanding [7] with Frank Perper as to developing the Washington area, the metropolitan area of Washington? A. We had a franchise with Mr. Perper.

Q. Did you have a franchise as to the whole area?
A. No, sir.

Q. All right, sir. Now, did you have any understanding, oral or written, with Frank Perper for the development of the metropolitan area by him? A. We always like for our franchise holders to develop other inns in the same immediate area.

Q. How did you express your desire or liking for Frank Perper to develop other inns in that area? What was the [8] form of it? A. I am not sure that I follow your question.

Q. I will repeat it in a different form.

How did you make known to Frank Perper that you desired him to build the Holiday Inns in that area? A. I imagine in conversation.

Q. And did you have a conversation with him? A. I am sure I did.

Q. Would you say that you had an understanding with Frank Perper as to the development of future Holiday Inns in Washington, D.C.? A. Again, that "understanding" is a broad word. Yes, sir, we have always asked that Frank Perper develop additionally in the Washington, D.C. area.

Q. I think you have seen this letter, and do you identify your signature on it? A. Yes, sir.

MR. FRIEDLANDER: Would you mark that for us?

(Whereupon the letter above referred to was accordingly marked Jeff Mann Deposition - Exhibit 1.)

* * *

[9] BY MR. FRIEDLANDER:

Q. Did you have an arrangement with him? A. No, sir. We had a specific franchise for a specific location.

Q. You have said that. A. Yes, sir.

Q. Now, in addition to the franchise, did you have any arrangement with him? A. No, sir.

Q. You did not? A. No, sir.

Q. Did you later make an arrangement with him?

[10] A. No, sir.

Q. You never did? A. We have never had anything other than a specific franchise, and we have about four

or five other franchises in the Washington area with Mr. Perper, which were granted at a later date.

Q. But you had no understanding with him as to the development of future Holiday Inns in Washington? A. It has been the policy of the parent company for always the same person to develop additional Holiday Inns.

* * *

[11] Q. Would you note the language of the last paragraph? A. Yes.

MR. FRIEDLANDER: I will ask you to mark that as Jeff Mann Deposition - Exhibit 2.

(Whereupon, the document above referred to was accordingly marked Jeff Mann Deposition - Exhibit 2, and same will be found among the exhibits hereto.)

BY MR. FRIEDLANDER:

Q. Now, let me see if I understand your testimony correctly.

In July of 1959, as shown by these minutes, applications of Frank Perper and Harold Perper for a location in Washington, D.C., at Glebe Road and Shirley Highway, near Washington, D.C., were approved? A. That's right.

Q. Now, can you explain to me why you used the expression, Washington, D.C., when you are referring to an Arlington County location in Virginia? A. Yes, sir, I can.

[12] Q. Would you do that? A. I filled out the application papers for that in June of 1959, and I made an error as to -- this was for a two-acre site. That was in the application, for a two-acre site in Arlington, Shirley Highway and Glebe Road, and D.C. was put after it -- which is not in D.C.

Q. That was in June? A. That was in June, and the application was approved in July.

Q. And when was it actually issued? A. The franchise was granted in July.

Q. And how was it granted other than by these minutes, any other way, any letter? A. Yes. There is always a telegram that goes with it.

Q. Do you have a copy of that telegram? A. I imagine we do.

Q. Could we have that put into the record? A. I am sure we can.

* * *

[14] Q. Did you write the letter? A. Yes, sir.

MR. FRIEDLANDER: Would you mark this letter Jeff Mann Deposition - Exhibit 3?

(Whereupon, the letter of June 6, 1959, to Kemmons Wilson from Julian Savage was accordingly marked Jeff Mann Deposition - Exhibit 3, and same will be found among the exhibits hereto.)

* * *

[15] Q. Did you have anything to do with the Virginia site application? A. Shirley Highway and Glebe Road?

Q. Yes. A. I filled out the application papers for Mr. Perper. He was in the office at the time.

Q. Frank Perper made the application? A. Yes.

[16] Q. Do you know the date he made it? A. Again, I will have to go back to the records. I jotted some dates down. I believe it was June 13th, 1959.

Q. On June 13, he came to Memphis and talked to you and made an application? A. He made application for two; one for Winchester, Virginia, and one for this specific site.

Q. At that time, did you talk to Mr. Wilson about the application? A. I cannot recall, sir. This is so long ago it's impossible to remember.

Q. But the date is fairly accurate? A. Yes, sir.

Q. Do you recall what happened next in reference to this application? A. I imagine it was processed and put in front of our Executive Committee.

* * *

[18] Q. Do you know why you did talk to him about Perper matters? A. I imagine just the regular -- I don't remember. I don't recall. I should point out that Mr. Margolius and Mr. Perper have a number of other franchises around the United States, and there could be other matters.

* * *

[19] Q. Now, let's go back to some dates.

On June 6, a letter was sent by Julian Savage. Do you know who Julian Savage was? A. Yes, sir.

Q. Who was he? A. He is the brother of Bernard Margolius.

Q. And with whom was he associated? A. I assume, with Frank Perper.

Q. When you say you assume, that's based on knowledge, isn't it? A. Yes, sir, past dealings.

Q. And although they have a different last name, you knew they were brothers? A. Yes, sir. Somebody mentioned this several years ago.

* * *

[20] Q. Mr. Perper came in and said he wanted to apply for two locations, and you filled out the applications? A. Yes, sir.

Q. What else did you do? A. I received a check for \$10,000.

Q. What else did you do?

* * *

[21] Q. What did you put on the application? A. I put two acres at Shirley Highway and Glebe Road.

* * *

[23] Q. Do you remember any other names being mentioned as part of this deal? A. There were no other names mentioned.

Q. I think you gave us the date before -- that was June 14th or the 12th or something like that? A. June 13th. That was the day I received the application, received the check, and the Executive Committee meeting was the following month.

Q. Yes. Then there came a time in September of that same year when you wrote a letter, and I am referring to Exhibit 1, a letter written by you to Bernard Margolius. Can you tell me why you wrote to Margolius about some discrepancy in this franchise, and what franchise were you talking about? A. I don't recall. I mean it's bound to be Shirley Highway and Glebe Road.

* * *

[24] Q. So there was some paper that you received from Bernard Margolius that caused you to write him?
 A. Possibly, but obviously at this particular time the exact location was not included in the plans and specifications, and that's apparently the reason I wrote the letter.

* * *

Q. The purpose of the letter is about franchise? A. The exact location of the particular inn and who the [25] principals of the corporation are.

* * *

[27] Q. Now, in January, 1960, there was issued to Frank Perper the original license agreement, and then there were changes made and a new one was issued, and the new one was dated April 25th, 1960. The only reason I tell you these things is so that we can get these dates in shape.

Now, we have the following year, on March the 9th, a letter written by you, marked -- let's mark it first -- Exhibit 4.

(Whereupon, the letter above referred to was accordingly marked Jeff Mann Deposition - Exhibit 4, and same will be found among the exhibits hereto.)

BY MR. FRIEDLANDER:

Q. A letter written by you to Robert Weiss, saying, "As I mentioned to you over the phone, [28] we are committed for the Washington area; however, we would like to review your property. If we are in a position to work something out, we will notify you to that effect."

To whom were you committed for the Washington area in March, March 9th, 1961? A. This is a double-barreled thing. Holland Tunnel is also mentioned in that letter. I had a conversation with Mr. Weiss two days before, on March 7th, and the only reason I know that is that I went through the file and there was a handwritten, hand-scratched, memorandum by me written on that very thing.

Q. This letter says,

"It certainly was a pleasure talking with you last Tuesday morning in regard to your project near the Holland Tunnel and also your property is downtown Washington.

"As I mentioned to you over the phone, we are committed for the Washington area . . ."

[29] Q. Now, I am asking you to whom were you committed for the Washington area on March 9th, 1961? A. I don't know, at that time. I assume it was Frank Perper.

Q. How about Martin Perper? A. No. I would say Frank Perper.

Q. Now, on August 17th -- (interrupted). A. I might emphasize here, in going back on that question, that franchise was issued right about that same time for the Shrine location in Washington, and that was in the same area. I have a date of April 12th, and as usually is the case those things are worked on about thirty or sixty days prior to that, when we get knowledge of it.

Q. I heard what you said, but I don't understand. Are you saying that the franchise for the Shrine carried with it commitment for the Washington area? A. No, sir. I am not saying that at all.

Q. All right. Let's go on then, unless you want to add anything. A. No. But that said downtown Washington, D.C., and I assume that's in the same area. I don't even recall what location it was in downtown Washington.

[30] Q. Now, on August 17th, 1961, you said in your letter, Exhibit 2, which was to confirm some conversation in the Memphis office with Mr. Finkelstein -- of August 17th, 1961 -- you then wrote to him, returning his check for \$10,000,

"As we discussed, we do have an understanding with Mr. Frank Perper as to the development of future Holiday Inns in Washington, D.C. On the basis of this commitment, we are returning your application."

Now, what commitment are you speaking of, and what understanding are you speaking of, with Frank Perper,

if you now can recall? A. Well, again, I cannot recall, but based on that -- there were three franchises already in existence on the date of that letter, and there is bound to have been three or four other conversations about other locations in the Washington area.

Q. Now, let's come to some basic facts that you can help us with.

What protection do you offer franchise holders? [31]

A. In what manner, territorial limits?

Q. Against competition by your own motels, or motels franchised by you. A. Legally, in writing, nothing.

Q. But by custom and habit and understanding, what protection do you offer franchise holders? A. I think a moral obligation not to go into competition with them.

Q. And what do you consider -- or what did you consider at that time to be the boundaries on which you would protect them? A. There are no boundaries: in other words, just common business sense.

Q. In other words, if motels were on different main routes, they could be close together, but you wouldn't put two close together on the same route? A. There are no two cities the same, sir.

Q. Who decides the protection the franchise holder is to have, if any? A. No one, because there is no territorial limits, and it boils down to basic common business sense, and I would say the franchise sales department makes recommendations.

[32] Q. Who makes recommendations? A. The franchise sales department.

Q. That would be you? A. There are four of us in the department.

Q. Who would be in charge of that department? A. Mr. Ladd would be.

Q. And he would have been the one to know about it? A. Know about what?

Q. Whatever theories you have on protection. I am trying to find out the theory on which you offer protection. A. We have no theory, sir.

Q. No principles? A. Well, we always have principles.

Q. I am speaking of principles of location. A. No, sir. There is no formula or pre-arranged idea as to when and where and how we can develop Holiday Inns in the same basic area. We have always made it a practice for anyone carrying the same name, for the same people to own and operate those operations.

Q. In August of 1961, the property being referred to by Mr. Finkelstein to yourself was on the Baltimore Parkway outside of Washington.

[33] Now, do I understand that this came within the protective conditions for Frank Perper, so that you would not let Mr. Finkelstein have a motel on the Parkway in Maryland outside of Washington, because Mr. Perper had some motel close by? A. Well, he had a franchise for one at College Park.

Q. Wasn't that Martin Perper? A. Yes, sir, I believe it was.

Q. And didn't you start out at the beginning of this deposition and tell us there was no connection between the two? A. Well, they are father and son.

Q. Well, are they separate applicants? Are they both working on the same protective clause, or are they separate? A. They are separate.

Q. So you don't mean that Martin Perper's College Park was in competition with Mr. Finkelstein's proposed motel where Frank Perper had the protection? A. Repeat that again. This is a lot of double talk.

Q. Now, the double talk, I don't think, is on my part, if I may say that.

Frank Perper -- you said in your letter -- you had [34] a commitment with him, an understanding with him, and, therefore, you would not take Finkelstein's application for a motel outside of Washington in Maryland. That part is clear from the letter. A. Possibly. It covers a lot of territory.

Q. Take a look at Exhibit 2 and read the last paragraph. A. All right, sir.

Q. Now, were you protecting Martin Perper as well as Frank Perper? A. We were protecting anyone that owned a Holiday Inn nearby.

Q. Can you tell us why you didn't mention Martin Perper's name? A. I don't recall.

Q. Now, why did you give that protection either to Martin Perper or to Frank Perper as against Finkelstein? A. We would do it in the case of any city, any franchise holder, any person that has developed a million dollar piece of property.

Q. How about the Shirley-Glebe Motel? Was that a good development, a good motel? A. I have never seen it.

[35] Q. Do you know from your records whether it would be one worth protecting? A. Yes, sir.

Q. Have you offered protection to that motel?

MR. GALIHER: I object to that. What do you mean by, 'have you offered protection'?

MR. FRIEDLANDER: If he doesn't understand it, he can say so.

BY MR. FRIEDLANDER:

Q. The objection has been made, and you are entitled to answer, unless your counsel suggests you not answer.

A. Why don't you rephrase the question? I missed the whole thing completely.

Q. All right. Let's go back.

What understanding did you have with any owners of the franchise of the Glebe Road-Shirley Highway Motel which entitled them to the protection against unfair competition, or competition? A. I don't know. I mean, we had nothing.

Q. You would have given them the same protection as you were giving Frank Perper and Martin Perper?

A. Yes, sir.

[36] Q. Did you offer that protection as a fact against Frank Perper's Rosslyn Motel? A. Let's see -- Rosslyn is right across the road from Washington, D.C.?

Q. That's right; right across the bridge. A. I am sure we waited.

Q. What distance is that? A. I haven't any idea.

Q. Did you check it? A. I didn't personally; no, sir.

Q. Did anybody, to your knowledge, in your outfit?

A. I am sure they did. Jack Ladd, in all probability.

Q. Jack Ladd is under the impression there are no such protective features of the franchise, the way I understand his testimony.

* * *

[37] THE WITNESS: In answer to that question, we have no territorial limits on this franchise, Shirley Highway and Glebe Road.

* * *

[39] CROSS EXAMINATION

BY MR. HILLAND:

Q. *** What was the first Holiday Inn that was granted a franchise in the Washington area? A. It's a difficult question to answer, because I really went to work for Holiday Inns in 1958, and I don't really recall whether they had a franchise prior to that. To the best of my recollection, it would be the Shirley Highway-Glebe Road.

* * *

[41] Q. Do you know how it happened that the original franchise was issued to Frank Perper and the second franchise was issued to him, Harold Perper and a man named Cohen? A. Yes, sir; at the request of Mr. Perper and at the request of someone else, either Margolius or Savage.

Q. In what form did that request come? A. A letter.

Q. Do you have that letter? A. Yes, sir.

Q. May we see it? A. Yes, sir.

MR. DUNLAP: Off the record.

(Unreported discussion.)

MR. HILLAND: On the record.

May we have these marked as the next exhibit, these three documents, marked Exhibits 5-A, 5-B and 5-C?

(Whereupon, the documents above referred to were

accordingly marked Jeff Mann Deposition - Exhibits 5-A, [42] 5-B and 5-C, respectively, and same will be found among the exhibits hereto.)

BY MR. HILLAND:

Q. I show you what has been marked as Jeff Mann Deposition - Exhibit 5-A, Exhibit 5-B and Exhibit 5-C.

Can you identify the signature on Exhibit 5-A? A. No, sir, I wouldn't recognize Mr. Margolius's signature at all.

Q. Was it received in your office? A. I am sure it was. It's addressed to Jack Ladd. There is no receipt stamp on it.

Q. It came out of your file? A. Yes, sir.

Q. You got it personally out of your file? A. Yes, sir.

Q. Can you identify the handwriting on that Exhibit 5-B? A. No, sir. I have seen this type of signature before, and I assume that's Frank Perper's.

Q. Do you know his signature? A. I have seen it several times, but I don't know it [43] personally.

Q. Would you say that is it? A. It looks like it; yes, sir.

Q. It came out of your file? A. Yes, sir.

Q. It was on the basis of those two letters, Exhibits 5-A and 5-B, that Holiday Inns of America, Incorporated wrote 5-C, isn't that correct? A. That's true.

Q. And it was as a result of those letters, 5-A and 5-B, that you rewrote the franchise? A. Yes, sir.

Q. As of what date was that sent? A. This was October 31, 1960, Jack Ladd's letter.

Q. Now, in your deposition, by Mr. Friedlander, you said, if I made my notes correctly, in case of a syndicate, you had one man who was responsible to Holiday Inns of America, Incorporated? A. That's right.

Q. What do you mean by that? A. Well, it's impossible for us to have all of the financial statements for every participant in the syndicate, [44] and in our business we ask that everyone in that group, that they do not

have other holdings in other motor hotels that would be competitive with the Holiday Inn system. So, to solve the problem in the case of a syndicate, since there are so many investors -- there could be as many as a hundred -- we have always made it a practice to work with one man, and it would be his responsibility to keep his group in line. In some cases, a man may dissolve his interest and sell his shares. This is not of interest to us. The main thing we want to do, if we have that problem, that one inn, we can go to one man, and that problem probably will be solved, rather than dealing with fifty or sixty people.

Q. Was that true in the case of Holiday Inn in Arlington? A. We were seeking a solution as to how to handle this syndicate, and -- yes, sir, I would say this would be the case of many of our applicants. I don't know if it is true with this particular one.

Q. When this franchise was originally issued on January 16th, 1960, to Frank Perper, he was the one man of that syndicate to whom Holiday Inns of America looked for [45] responsibility, isn't that correct? A. The only catch is we did not know, I don't believe, at that time, whether there was going to be a syndicate, a corporation, or an individual basis, or anything like that. He made application for the franchise, and how he set it up was not our problem at the time.

Q. When did you learn that a syndicate was involved? A. The first time I knew anything about it -- and I really didn't pay any attention to it at that time -- was when we received the lease with Mr. Shapiro, and there was a whole raft of names mentioned in this lease. But I would not be exposed to this normally. Mr. Ladd, who really handled this particular matter, would be the one to be exposed to it.

Q. Well, when did you first learn that Frank Perper was not the only one interested? A. I cannot recall the true date.

Q. When did you first learn about this license agreement that was issued April 25th, 1960? A. Which one is that, now?

Q. That's this one right here (indicating). A. I imagine a few days after receipt of that letter, [46] a few days after receipt of Exhibit 5-B, whatever it was.

Q. When was that license issued with respect to the lease, to which you referred? I mean in point of time, which came first? A. I cannot recall. I can go back to the record and find out.

Q. Would you do that? A. Yes, sir, I would be glad to. In other words, you want to know the date of the time we received the lease?

Q. Yes, when you learned the names of all the parties interested in this franchise. A. All right, let me go get that.

MR. HILLAND: Off the record.

(Unreported discussion.)

MR. HILLAND: On the record.

BY MR. HILLAND:

Q. Mr. Mann, did you receive a reply to this letter marked Exhibit No. 1 to your deposition? A. To the best of my knowledge, no, sir. I must have, but I don't remember. I will find out.

Q. Will you find out and furnish us a copy of it, so [47] that we can attach it to this deposition? A. Yes. I write in excess of three or four hundred letters a week, so it is hard to remember with that volume of work.

Q. Would you do that during the luncheon recess? A. I will be glad to; yes.

Q. Now, when this license agreement was rewritten on April 25th, 1960, instead of having one man of this group; namely, Frank Perper, responsible to Holiday Inns of America, Incorporated, you had three, isn't that correct? You had Frank Perper, Harold Perper and Edward Cohen? A. Yes, sir.

Q. As of that time, did Holiday Inns of America, Incorporated, know there were more than those three involved in the Holiday Inn of Arlington? A. I don't know. I did not.

Q. When did you learn there were others interested in this? A. I cannot recall.

Q. Do you know when Holiday Inns of America, Incorporated, learned the names of all the parties in interest?

A. No, sir. I might emphasize that I have continually [48] gotten this thing confused with Durham, North Carolina. We asked and received a complete list of the stockholders involved there, and it was a long, drawn-out thing, and that's where we got mixed up here. To my knowledge, I don't know that I have ever known up until maybe six or seven or eight months ago.

Q. Returning to these exhibits, Exhibit 4 to your deposition is dated March 9, 1961, and in that you state,

"We are committed for the Washington area."

And in Exhibit 2, which is dated August 17, 1961, you state,

"We do have an understanding with Mr. Frank Perper as to the development of future Holiday Inns in Washington, D.C."

Do these two letters refer to one commitment, or do they refer to two? A. To my knowledge, we have no commitment. I don't know. Put it off the record. Again, I am not trying to be evasive here, but completely above-board and honest.

Q. I realize that. A. I think when I started with the company we always granted a franchise for a specific location.

* * *

[49] [Reporter reading question.]

"Q. Do these two letters refer to one commitment, or do they refer to two?"

THE WITNESS: In answer to that, we had no commitment.

BY MR. HILLAND:

Q. Is it your testimony, when you wrote on March 9, 1961, to Mr. Weiss,

"We are committed for the Washington area,"

that statement was in error? A. It sounds like it is; yes, sir. It's hard for me to recollect. I would say it is; yes, sir.

[50] Q. And do you mean by that, that as of that date Holiday Inns of America, Incorporated, was not committed to any person, firm or corporation for the Washington area? A. Legally, we have never been obligated for anything other than specific site on each and every franchise in the Washington, D.C., area.

Q. Now, on August 17th, 1961, when you wrote to Mr. Finkelstein,

"... we do have an understanding with Mr. Frank Perper as to the development of future Holiday Inns in Washington, D.C."

was that statement correct? A. Legally, we had no obligation, so that statement apparently would be in error.

* * *

[51] Q. As of August 17th, 1961, did you have any understanding of any kind or nature with Mr. Frank Perper as to the development of future Holiday Inns in Washington, D.C.? A. Repeat that question.

MR. HILLAND: Would you read the question?

(The reporter read the question.)

THE WITNESS: We had talked with him about a number of sites in Washington, D.C.

BY MR. HILLAND:

Q. Did you have any understanding with him? A. Define "understanding".

Q. I am trying to find out what you meant when you used the word. A. Legally, we had no understanding.

Q. Well, did you have any informal understanding with him? A. I think morally we always have an understanding with any city, in any city.

Q. What do you mean by that? A. I just think we owe it to a man who has a large [52] location, large investment in one location, not to go into competition with him.

* * *

[54] Q. Well, after the franchise was issued. A. Again, may I ask a question -- and could this be off the record? I am a layman, and you will have to pardon

this, but an understanding to me means an obligation, legally, for the development of other Holiday Inns.

Is this true?

Q. I don't know what you mean by it. That's what I am trying to find out. What I think doesn't make any difference. A. I am trying to give you the answers that you seek, and I am not trying to play cat and mouse, but also there is a broad field here that we are talking about.

Again, I paraphrase it all with, "legally."

Q. Whatever obligation Holiday Inns of America, Incorporated, [55] feels to the holder of a franchise in a particular area springs from the first franchise issued, doesn't it? A. True; possibly.

Q. Why do you say, "possibly"? A. In the case of Louisville, Kentucky, this was not true.

Q. How about the Washington metropolitan area? A. I would say it would; yes, sir.

* * *

[56] Q. But the foundation, the original foundation of Holiday Inns of America's feeling of obligation to Frank Perper sprang from this franchise of January, 1960?

A. Remember that Jeff Mann was not an officer of the company in 1960, and that the Executive Committee sets the example and sets the pace; so Jeff Mann's opinion versus the Executive Committee could be possibly different.

* * *

CROSS EXAMINATION

BY MR. GALIHER:

Q. Mr. Mann, did Holiday Inns of America issue a franchise to a gentleman by the name of Krisch in Alexandria, Virginia? A. Yes, sir.

[57] Q. Do you recall the date that that franchise was issued? A. No, sir.

Q. Do you recall that it was after the one at Shirley Highway-Glebe Road? A. Yes, sir.

Q. It was? A. Yes, sir.

Q. Is that in the Washington metropolitan area? A. In Jeff Mann's understanding, it would be; yes, sir.

By the way I might again emphasize that that's in the Directory in that manner. That's in the Washington area.

Q. Is your company presently negotiating with the McLosky Company of Philadelphia with respect to another franchise to be issued in the City of Washington, D.C., proper? A. I personally am not aware of these negotiations. Jack Ladd mentioned them yesterday, and I believe they are being handled by Kemmons Wilson.

* * *

**EXCERPTS FROM DEPOSITION OF
ELMER C. (JACK) LADD**

[Memphis, Tennessee, June 27, 1963]

[2] **DIRECT EXAMINATION**

BY MR. FRIEDLANDER:

Q. Would you state your full name, please? A. Elmer C. Ladd.

Q. And what is your business or profession? [3] A. Salesman.

* * *

Q. Are you an officer of Holiday Inns of America? A. Yes, sir.

Q. What position? A. Senior vice president.

Q. And are you engaged in your employment, your work, with franchising or licensing agreements? A. Is my work connected with franchising or licensing agreements?

Q. Yes. A. Yes.

* * *

[8] Q. Will you tell me as briefly as you can the history of your relationship with him? I know you are not related to him by blood. I am speaking now of your dealings with him. [9] A. I think Frank first came to us — and, again, we would have to go back to the files to get the right date — but I think the first contact we had with him was on Myrtle Beach Franchise with a Mr. and Mrs. Smith, and I have forgotten who the other people were,

and I believe that was probably around 1953 or '54, and since then I guess we have done business with him constantly. He has been responsible for about, I would say, more than twenty-five Holiday Inns, and he is building about four or five now.

* * *

[14] Q. May I ask you — was the Washington metropolitan area — I am speaking of the District of Columbia, not the State of Washington — was the Washington metropolitan area ever committed to Frank Perper? A. No.

Q. The answer to that is no? A. Yes.

Q. Was the right to develop the Washington metropolitan area ever given to him in any form? A. Yes; verbally. It wasn't given to him. I might [15] explain that.

Q. If you will. A. If we were to give someone that particular right in Cleveland —

Q. Let's stick to this one. A. Well, I have to make an example. In Cleveland, Ohio, you will find a contract with Roger Michaelson for the City of Cleveland and its environs, and its franchise is for three years. He must build five Holiday Inns within the three years, and he paid one total cost of the franchise and five thousand on the additional four, with notes for the four, and then as he starts construction, those notes become due and payable. This gives him the right to that city, but at the end of the third year, when he has built those five, he will have to renegotiate that, because then we will have five specific locations.

Q. Was that in writing? A. Yes.

Q. Do you have anything in writing with Mr. Perper relative to the Washington metropolitan area? A. No formal license agreement. It might have been [16] mentioned that as long as he continued to develop Washington to our satisfaction that we — but I don't think that's a commitment of the company.

Q. Now, let me ask you — did you talk to him about the Washington metropolitan area? A. Many times.

Q. And did you ever tell him that you would let him have first refusal? A. No.

Q. What did you say to him? A. I told him that he could expect at any time the parent company to come in there and build a Holiday Inn. I also told him that Kemmons Wilson, who is chairman of the Board, has a tremendous number of friends and people who are in Washington, and it might be that at some time we would put another Holiday Inn franchise in there, but we would at all times talk to him and be sure if we did that we didn't have any conflict with anything else he had.

Q. Why did you talk to him about the Washington metropolitan area? A. I am a salesman, and as a salesman my job is promoting and producing Holiday Inns, and it's obviously to [17] the benefit of the parent company to get as many inns as we can get built in the areas where they can be properly supported, in an area that can properly support them.

Q. What was said by him that made you think he was interested in the Washington area? A. I couldn't recall any conversations that would have direct bearing on that.

Q. Don't you recall a discussion about an inn going up in Arlington, which is the metropolitan area? A. The funny part of that is that I didn't get in that discussion until that inn franchise had been sold. Jeff Mann handled that. He wrote the licensing agreement on it. He will be in later.

Q. Was your conversation with Mr. Perper relative to the metropolitan area, as undecided as it was; was that before or after the Arlington deal? A. That would be afterwards.

Q. In other words, there already had been some form of licensing agreement for the site before you ever talked to Mr. Perper about this? A. Actually, we didn't consider Arlington as Washington, D.C.

[18] Q. You didn't? A. It's not in Washington, D.C.

Q. Not in the metropolitan area? A. Well, you can interpret the metropolitan area many different ways.

Q. I am taking your interpretation. A. Geographical-

ly, the Arlington franchise is in Arlington — just the same as the one in Alexandria is in Alexandria.

Q. In other words, I understand that the thinking of the company as far as you know is that Arlington County Motel would not be considered as Washington, D.C. ?

A. No.

Q. Nor Alexandria ? A. No.

Q. And there would be no reason to list them together ? A. Well, now, you get back to areas where people are going into, and for the purpose of not confusing people, if you will get the directory, you will find the greater Washington area listed.

Q. It includes parts of Maryland ? A. Right.

[19] Q. Parts of Virginia ? A. Yes.

Q. Alexandria and Washington, D.C. ? A. That's right. That's a geographical description of a location, so that our people traveling don't get confused.

Q. Because they could stay in Alexandria or Arlington and out in Maryland and be close to the District of Columbia ? A. Well, one problem we have there — it's more than that — if you are leaving here, and you have never been in that area and you have a reservation for a Holiday Inn, and you go by a sign, you think that you are at the one that you reserved into, and you might get in there and the clerk may have rooms and may not check his or her reservation list and room you, and then three or four hours later find out that you don't have a reservation. Well, that means that the person at the other end holding your reservation may sit there all night and not sell the room; so we try to describe areas and put all the Holiday Inns that are in that area on the card so that — (interrupted).

[20] Q. Well, I don't think we need to spend more time on that. I understand what you are saying. As I understand it, the only person in your company, so far as you know, who discussed the reservation of the metropolitan area of Washington, D.C., with Mr. Perper was you ? A. Oh, I imagine Frank has talked to Kemmons about Washington. I imagine he has talked to Jeff about Washington.

There is a lot of conversation that goes on, and just to say that Number One talked to anybody but me, I can't make that statement.

* * *

[21] Q. But do you have a memory of discussing with him the reservation attempt for him to reserve the area after the Arlington franchise had been issued? A. Yes, we have talked about it on many occasions, and he has been unhappy with us because we let the thing go into Alexandria, and because we are now discussing with some people for a Holiday Inn in downtown Washington that is not Frank Perper.

Q. You are talking about Adolph Krisch in Alexandria? A. Yes, but we are also talking with other people about an inn in downtown Washington.

* * *

[22] Q. Did he complain that Alexandria was too close to that? A. No. We didn't agree with him on the Alexandria thing.

* * *

[Exhibit 1 - Ladd Deposition]

HOLIDAY INNS OF AMERICA, INC.
EXECUTIVE COMMITTEE MEETING
July 14, 1959

A meeting of the Executive Committee of Holiday Inns of America, Inc. was held at the company offices on July 14, 1959.

The following members of the Executive Committee were present:

Kemmons Wilson
Wallace Johnson
William B. Walton
Charles M. Collins
Raymond Williams
E. B. McCool
Jack Ladd

Mr. Jack Ladd of the Franchise Sales Department presented the following applications for Holiday Inns of America, Inc., license agreements:

1) WASHINGTON, D.C. (Arlington, Virginia) — application for: Messrs. Frank Perper and Harold Perper, 9101 E. Bay Harbor Drive, Miami Beach, Florida, Apt. 301.

This application is for a location in Washington, D.C. whose approval is subject to the standard provisions and requirements of our license agreement with the understanding that your license is for a specific location containing approximately two acres located at the intersection of Glebe Road and Shirley Highway near Washington, D.C. This license is for one Holiday Inn to be built on that specific site.

Fee: \$10,000.00 - 10¢. Approved.

2) WINCHESTER, VIRGINIA — Application for: Messrs. Frank Perper and Harold Perper, 9101 E. Bay Harbor Drive, Miami Beach, Florida. Application for specific location.

Fee: \$10,000.00 - 10¢.

There being no further matters to come before the Committee, a motion was made and duly seconded and unanimously adopted that the Committee adjourn.

William B. Walton, Chairman

EXCERPTS FROM DEPOSITION OF
KEMMONS WILSON

[Memphis, Tennessee, June 27, 1963]

[2] DIRECT EXAMINATION

BY MR. FRIEDLANDER:

Q. Would you state your full name, sir? A. Kemmons Wilson.

Q. Your address? A. 3615 South Galloway Drive, Memphis, Tennessee.

[3] Q. And what is your profession or occupation?
A. I am chairman of the Board of Holiday Inns of America.

* * *

[8] Q. What was the first site that was opened in Washington, if you recall? A. As far as I know, it was Shirley Highway and Glebe Road. That's not Washington, but I assume you mean the Washington area.

Q. Metropolitan Washington. You understood that that was the first franchise granted which resulted in a motel in the metropolitan area of Washington? A. Yes. Would you like for me to tell you what I recall [9] about it?

Q. Yes, if you will. A. I looked at this site, this identical site. Is it Glebe Road and Shirley Highway?

Q. That's right. A. And from my memory they wanted some two hundred and fifty thousand dollars for it. It was offered to me as a representative of the parent company. I went out and looked at it and spent a couple of days in Washington. When this was I couldn't tell you. It was some time between '54 and '58, or whenever it opened, anyway, and the other inn was built across the street there, and I don't recall the name, but I was there for two nights during the wintertime, and I counted cars, which is the only way I know to determine occupancy, and he wasn't even doing twenty per cent occupancy, and I decided that this was not the right location. Some time later — and the first thing I remember about

the situation coming on again, Frank Perper wanted to buy this exact, same location, talked to me about it, and I told him what I had found out and very much advised him against doing it. He said he had checked the other motel out thoroughly, [10] was convinced that they were doing plenty of business.

I said, "Frank, if that's what you think, I think the price of the ground is way high, and I don't think there is much business over there from what I saw, but if you still want to go, I just want to tell you what we are talking about, and you go ahead and make your application and do what you want to do."

Q. Did he make the application? A. I assume that he did. The plant was finally built. I mean I would have to refer to the records to see who actually made the application, but that would have been done through Jack Ladd and Jeff Mann's department. I would only have sat in on the final deal.

Q. Did you ever talk to Mr. Weiss about this location? A. Not that I recall; no, sir.

Q. Do you recall what sort of protection you understood or it was agreed you would give to the builder of that motel, if any? A. Well, I remember telling Frank Perper very definitely, when he was talking about it, that at that time I was trying to get a piece of ground that was right there by where the motel is, right adjoining the Washington National Airport, [11] and I told him I wanted him to know very definitely if he took this franchise it was a good possibility that we might build within a mile of him, but we wouldn't build on the Shirley Highway. I was working on a piece of ground that was over there where there has been another motel or two built since that time. It was right there adjacent.

* * *

[12] Q. He understood that definitely, that you reserved the right to build for the company, but that he would have a first refusal, sort of, on the other locations? A. I couldn't tell you exactly what Jack Ladd's conversation with him was, but I did tell him that we

definitely intended to come into the Washington area, the parent company I am speaking of.

* * *

Q. Was there an inn then built by a man named Adolph Krisch in Alexandria? A. Yes, sir.

Q. Did Mr. Perper attempt to stop the building of that inn, as you recall? A. He didn't attempt to stop it with me. I remember he made some conversation that he thought it was too close to him, but we told him real quick that all we did was to franchise the individual inn. This was in another city on another highway.

* * *

[14] CROSS-EXAMINATION

BY MR. HILLAND:

* * *

[17] Q. Mr. Wilson, did you personally participate in any way in the preparation of this license agreement dated January 15th, 1960, to Frank Perper? A. What do you mean by 'personally'?

Q. Did you personally have any participation in the preparation of that document? A. No, sir. So far as I know, I did not.

* * *

[18] Q. Did you have any knowledge of that change that has apparently been made on Page 1? A. No. Can you tell what that is that is struck out?

Q. No. We have been trying to find out. That's what I was going to ask you, if you had any knowledge of that. A. I have no knowledge, but this was our general policy at this time. We only gave a franchise for a location, and that apparently is what this is.

Q. When you say, "location," you mean one single site? A. One single site.

EXCERPTS FROM TRIAL PROCEEDINGS

December 13, 1965, et seq.

* * *

[14] MR. HILLAND: The reason I assume this position is the fact, Your Honor, that I appear for the Defendants Margolius and Deckelbaum against whom the plaintiffs herein do not seek any relief.

THE COURT: Yes, I understand.

MR. HILLAND: And on behalf of them we have asserted a cross-claim against our co-defendants so that we are really in the position of plaintiffs in this case.

THE COURT: And the cross-claim is the same as the claim in the original complaint?

MR. HILLAND: Yes, sir — it is essentially the same — well, it is the same, and in addition to that, Your Honor, the evidence will show that prior to the creation of the joint enterprise upon which the plaintiffs have rested their case, the defendant Bernard Margolius and the defendant Frank Perper were engaged in a partnership which was doing a motel business elsewhere then the Washington metropolitan area. That is to say, along the Atlantic Coastline from here to Florida — they had been building motels and had been leasing motels and had been operating motels. In fact, they were in quite a number [15] of motel businesses over the period from about 1950 or 1951 up until the time of the joint enterprise coming into existence which we are concerned with here.

Now as a result of this experience between Frank Perper and the defendant Bernard Margolius, Mr. Margolius had acquired the reputation in the community of knowing something about the motel business and it was as a result of that that the plaintiff, Mr. Robert Weiss came to him and said that he and his co-plaintiffs had a site at Shirley Highway and Glebe Road in Arlington County which they thought would be a good site to develop with a Holiday Inn motel.

As a result of that contact between Mr. Margolius and Mr. Weiss, Mr. Margolius felt obligated to, and did in fact, contact Mr. Frank Perper whom he regarded as a partner or as his partner in the motel business, and Mr. Frank Perper at that time was in Miami Beach, Florida, and as a result of that contact by Mr. Margolius of Mr. Frank Perper, the arrangement was made in Richmond, Virginia, to which Mr. Friedlander has referred and about which he has told Your Honor, and the arrangements made, and it was at that time that the joint enterprise on which the Plaintiffs rest their case was organized.

That first meeting was in April of 1959, and [16] following that in May of 1959 two of the plaintiffs, Mr. Brodie and Mr. Weiss, journeyed to Memphis, Tennessee, where they arranged for the franchise for this site and for the right to develop the Washington metropolitan area with Holiday Inn motels, and those arrangements were confirmed on June 8, 1959 in a letter written by the Defendant Julian Savage who, although he bears a different name, is actually the blood brother of the defendant Bernard Margolius, and that letter does confirm or tend to confirm the oral understanding or oral agreement about the joint enterprise, and confirms the fact that it was to cover the metropolitan area as well as the specific site on the Shirley Highway and Glebe Road.

Now, in the meantime, the plaintiffs arranged for an option on that site subject to rezoning and the option was then extended from time to time and the property was eventually rezoned.

A franchise was obtained and originally it was obtained in the name of the Defendant, Frank Perper. Now, while it was in his individual name he in equity, and in fact, held it as trustee for the group, so that when he went about operating or developing the Washington area with Holiday Inn motels, he not only was breaching the joint venture agreement into which he had entered in

Richmond, Virginia, in April 1959, but he was breaching his position of trust which was really a two-fold [17] position of trust. One, because he was a member of the joint venture agreement, and two, because he was the one who held the franchise.

THE COURT: What breach of trust do you charge specifically, Mr. Hilland?

MR. HILLAND: When he went ahead and developed the Washington area, with Holiday Inn motels, and excluded the plaintiffs.

THE COURT: Oh yes.

MR. HILLAND: And the defendants Margolius and Deckelbaum — he breached the agreement, he breached his trust which, as I have indicated, was a two-fold trust, one, because he was a member of the joint venture, and two, because he held the original franchise in his own name, when in reality he was a trustee for the group.

Now, therefore, in holding that franchise, the right to develop the Washington metropolitan area with Holiday Inn motels sprang from that original franchise so that when he went about developing the area to the exclusion of the plaintiffs and the two defendants whom I represent, in so doing he was breaching that trust.

Our position then, Your Honor, is that the oral agreement is actually corroborated by two written instruments, one a letter written by the defendant Julian Savage on June 8, 1959, on behalf of the group, and also as confirmed [18] by the location described in the original franchise as it was originally drawn.

The expert evidence will show in this case that originally it was drawn to cover Arlington, Virginia and Washington, D.C., and the evidence will further show that without the knowledge or consent of, (or any notice whatever) of the plaintiffs or the defendants Margolius and Deckelbaum, the description of the site was stricken out and initialled by Frank M. Perper and an official of

Holiday Inn Motels and the specific site Shirley Highway and Glebe Road was inserted in lieu of the original designation.

Now our position in relation to that, Your Honor, is that in effect it amounted to a reformation of that agreement without the knowledge or consent or without any notice whatever to the parties in interest.

THE COURT: But that agreement was not between the parties in interest was it?

MR. HILLAND: Well, it was between them in the sense — yes I say it is, because it was in the name of Frank Perper as their trustee.

THE COURT: Yes, but perhaps I misunderstand this. This was an agreement between Frank M. Perper and Holiday Inns of America?

MR. HILLAND: Yes, Your Honor.

THE COURT: And you claim that he was acting [19] as trustee?

MR. HILLAND: Yes, Your Honor.

THE COURT: For all the plaintiffs?

MR. HILLAND: Yes, sir. For all of the parties.

THE COURT: And he claims that he was not, is that it?

MR. HILLAND: No I think he admits that he held it for the group. I think I can state that safely, Your Honor — that it is not disputed. I think he admits that.

THE COURT: I see.

MR. HILLAND: Thank you, Your Honor.

* * *

[49] MR. HILLAND: In my opening statement yesterday, Your Honor, I pointed out that there is involved in this case more than a breach of an agreement, although it

involved a breach of agreement — but there was in addition a breach of trust. I pointed out to Your Honor that the first franchise in relation to the Shirley-Glebe site was taken in the name of the defendant, Frank Perper, and although he was not designated a trustee in that franchise, he was in fact the trustee for the group.

I then pointed out in my opening statement the portion with the right to develop the Washington area with Holiday Inn motels springing from that original franchise.

The position that we take is that the trust, then, in relation to the several motels involved, resulting in the breach of trust on the part of Frank M. Perper was not required to be in writing.

THE COURT: Yes, I understand that, but what is the basis for your contention?

MR. HILLAND: Sir?

THE COURT: What about the basis; on what do you base that contention?

MR. HILLAND: I have based it on the contention that that trust in relation to the motels involved in this case arose by operation of law.

THE COURT: Why?

MR. HILLAND: Because he held the first franchise as trustee for the group and it was because of the fact that he held that first franchise that he had the commitment from the Holiday Inns of America in Memphis, Tennessee, to develop the whole Washington area. That is how he got control of this whole thing.

* * *

[85] THE COURT: * * * if the Court finds that there was no such contract, then that would end the case and the other ramifications should be reserved until after a decision on that issue.

[86] CHARLES A. APPEL, JR.,
was called as a witness for and on behalf of the plaintiffs and, having been duly sworn was examined by counsel and testified as follows:

DIRECT EXAMINATION

BY MR. FRIEDLANDER:

Q. What is your full name? A. Charles Andrew Appel, Junior.

Q. And what is your address, sir? A. 3383 Stevenson Place, Northwest, Washington, D.C.

Q. What is your profession? A. That of documents examiner by which I mean analysis of handwriting, type-writing, identifying the person or the machine which had made the impressions on the document, analysis of paper or ink for evidence of authenticity.

Q. And when and how did you start this work, Mr. Appel? A. I started while employed as a special agent of the F.B.I. and I was asked by Mr. Hoover to study various subjects.

THE COURT: I might say that this witness has testified in this Court many times as a handwriting expert. Is there any question as to his qualifications?

MR. GALIHER: No, sir, none.

[87] MR. FOREMAN: No, sir.

BY MR. FRIEDLANDER:

Q. Mr. Appel, did you at my request obtain possession of a certain document from the office of Mr. Galihher in order to inspect it? A. Yes, sir.

Q. And did you make such an inspection? A. Yes, I did.

Q. And was this the document, the original of a document, which I hand to you, and which was marked at pre-trial — that is to say, a franchise agreement of 15th January 1960 which we will mark for identification —

(Whereupon, the document referred to was marked for identification as plaintiffs' Exhibit No. 1.)

Would you look at this photocopy and tell us whether you saw the original of that? A. Yes, sir, I did.

Q. And you examined it? A. Yes, sir.

MR. GALIHER: Would you like to use the original, Mr. Friedlander?

MR. FRIEDLANDER: If you have it, yes.

MR. GALIHER: Yes, here it is.

MR. FRIEDLANDER: May this be marked in lieu of the first one, Your Honor?

[88] THE COURT: Yes, if there is no objection.

MR. GALIHER: Certainly.

(Whereupon, the original of the document marked for identification as Plaintiffs' Exhibit No. 1 was substituted.)

BY MR. FRIEDLANDER:

Q. Mr. Appel, is that the agreement you examined?

A. Yes, sir.

Q. Looking at the first page of the agreement, did you ascertain what had been written under the portion which appears obliterated? A. Yes, sir.

Q. You did.

MR. FRIEDLANDER: Would Your Honor like to see this document?

THE COURT: Well, I think you ought to offer it into evidence before the Court sees it.

MR. FRIEDLANDER: I will offer it into evidence.

MR. GALIHER: No objection.

THE COURT: Let it be admitted.

(Whereupon, Plaintiffs' Exhibit No. 1 was received into evidence.)

THE COURT: Well, you may proceed.

BY MR. FRIEDLANDER:

Q. The first page obtains an obliterated section. Were [89] you able to ascertain what had been written underneath it? A. Yes, sir.

Q. Will you tell the Court what it was? A. Arlington, Virginia and Washington, D.C.

THE COURT: Now, I want you to give that to me a little more slowly.

THE WITNESS: Arlington, Virginia and then it says a plus sign Washington, D.C.

BY MR. FRIEDLANDER:

Q. Were you able to ascertain whose writing it was?

A. Yes.

Q. Would you tell us who had written this, "Arlington, Virginia plus Washington, D.C."? A. Frank M. Perper.

Q. And how did you make that examination?

THE COURT: Just a minute. Would you repeat the question.

BY MR. FRIEDLANDER:

Q. How did you make that examination, Mr. Appel — make that determination?

THE COURT: I am not quite sure that I understand the question and answer, or was there an answer as to who crossed out these words, or who had written it in previously?

THE WITNESS: As to had written them in — ?

THE COURT: Were they written in handwriting, or by [90] typewriter?

THE WITNESS: In handwriting.

THE COURT: Oh.

THE WITNESS: In the handwriting of the person who wrote "FMP," the initials alongside of it.

THE COURT: I see.

THE WITNESS: With the same ballpoint pen and who also wrote two notes or letters which had been submitted to me as the handwriting of Frank M. Perper.

MR. FRIEDLANDER: If you have it, yes.

MR. GALIHER: Yes, here it is.

MR. FRIEDLANDER: May this be marked in lieu of the first one, Your Honor?

[88] THE COURT: Yes, if there is no objection.

MR. GALIHER: Certainly.

(Whereupon, the original of the document marked for identification as Plaintiffs' Exhibit No. 1 was substituted.)

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MR. FRIEDLANDER: I will offer it into evidence.

MR. GALIHER: No objection.

THE COURT: Let it be admitted.

(Whereupon, Plaintiffs' Exhibit No. 1 was received into evidence.)

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THE COURT: Just a minute. Would you repeat the question.

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THE COURT: I am not quite sure that I understand the question and answer, or was there an answer as to who crossed out these words, or who had written it in previously?

THE WITNESS: As to had written them in — ?

THE COURT: Were they written in handwriting, or by [90] typewriter?

THE WITNESS: In handwriting.

THE COURT: Oh.

THE WITNESS: In the handwriting of the person who wrote "FMP," the initials alongside of it.

THE COURT: I see.

THE WITNESS: With the same ballpoint pen and who also wrote two notes or letters which had been submitted to me as the handwriting of Frank M. Perper.

BY MR. FRIEDLANDER:

Q. Now, you have with you a reproduction of what was written underneath the obliterated portion? A. Yes, sir.

Q. Would you produce that, please. A. I have two photographic enlargements of this portion of the exhibit showing the obliterations partly penetrated by the photographic process so as to reproduce the lines of the original writing which I have traced on a clear piece of plastic as to each and placed over the photographs so as to show how the lines fit together.

MR. FRIEDLANDER: Now, I would like to show these to counsel and offer them into evidence.

(Whereupon, the two documents referred to were marked for identification as Plaintiffs' Exhibits Nos. 2 and 3.)

[91] MR. GALIHER: I have no objection, Your Honor.

THE COURT: Well, in order that we don't waste any time on matters that are not in dispute, is there any dispute as to the handwriting?

MR. GALIHER: There is not.

THE COURT: Well, then I don't think you need to pursue it.

MR. GALIHER: All right, sir. I would like to offer two and three, however.

THE COURT: They are offered into evidence?

MR. FRIEDLANDER: Yes, sir.

THE COURT: They will be admitted.

(Whereupon, plaintiffs' Exhibits Nos. 2 and 3 were received into evidence.)

MR. FRIEDLANDER: I wonder if I may have the original of number one, Your Honor?

THE COURT: Yes.

BY MR. FRIEDLANDER:

Q. Mr. Appel, I show you Plaintiffs' Exhibit No. 1 and I ask you if you have identified the writing on the margin where the obliteration occurred? A. Yes, I identified the initials FMP as the writing of Frank Perper and signed at the end of the document and also whose handwriting has been submitted.

MR. FRIEDLANDER: I have no further questions.

[92] MR. GALIHER: I have no questions of this witness, Your Honor.

THE COURT: You may step down.

MR. FRIEDLANDER: May this witness be excused?
(Whereupon the witness was excused.)

MR. FRIEDLANDER: I would like to call Mr. Margolius, please.

Whereupon

BERNARD MARGOLIUS,
was called as a witness for and on behalf of the plaintiffs,
and having been first duly sworn was examined by counsel and testified as follows:

DIRECT EXAMINATION

BY MR. FRIEDLANDER:

Q. Would you state your whole name, please? A. Bernard Margolius.

Q. What is your address? A. 8201-16th Street, Silver Spring, Maryland.

Q. And what is your profession? A. Attorney at law.

Q. How long have you been so engaged? A. Since 1937.

Q. During the period of your practice did there come a time when you met Frank M. Perper? A. Yes.

[93] Q. One of the defendants? A. Yes, sir.

Q. Can you fix that period? A. I would say it was about the year 1951.

Q. And do you recall whether you met him in an official capacity, that is as attorney and client, or as a formal relationship, or merely friendship? A. No, I was introduced to him for some legal work.

Q. And did you thereafter represent him? A. On several matters, yes.

Q. Did there come a time when you became engaged in business with him? A. Yes, sir.

Q. And what was your relationship to him when you were so engaged in business with him? A. My relationship to him was, when I was engaged in business with him, was as a partner.

Q. Was there a written partnership agreement between you? A. On each occasion, yes, sir.

Q. Was there a general partnership agreement? A. No, sir.

Q. Did you have any letters in writing between you indicating the relationship? A. I don't quite understand the question, sir.

[94] Q. Well, a general partnership, you mentioned you acted as partners, was that reduced to writing in any way? A. No, that was a relationship which grew up over the years.

MR. GALIHER: I object to that, and ask that it go out.

THE COURT: What part?

MR. GALIHER: The last answer in which he says his relationship grew up over the years.

THE COURT: Well, the answer was no.

MR. GALIHER: Did you rule on it, Your Honor?

THE COURT: In other words, I understood it was a separate written agreement as to each project, isn't that right?

THE WITNESS: That's right.

BY MR. FRIEDLANDER:

Q. It was not a general partnership agreement? A. No, sir.

Q. Now, were you engaged in any particular type of partnership. What type of work were you doing as partners? A. Developing and building motels.

Q. Did there become a time when you became interested, that is as a partnership, in the Holiday Inns? A. Yes, sometime later.

Q. At the time you first met Mr. Perper, what was his [95] business, if you know? A. He was operating and was general manager of the Hotel 2400.

THE COURT: What?

THE WITNESS: He was general manager of the Hotel 2400.

BY MR. FRIEDLANDER:

Q. Did you learn in your conversations with Mr. Perper whether he had ever been connected with a hotel called —

THE COURT: Who are you referring to?

MR. FRIEDLANDER: Mr. Perper.

THE COURT: Who was the manager of the 2400, Mr. Frank Perper?

MR. FRIEDLANDER: Yes.

THE COURT: All right. I didn't catch the name.

BY MR. FRIEDLANDER:

Q. Now, did Mr. Frank Perper ever advise you of what his connections had been with the Hotel President, or the President Hotel, in Atlantic City? A. Well, my recollection of that would be that I sometime along the line learned he had operated that, I think for a trustee in bankruptcy, if I am not mistaken.

Q. Well, did there come a time when you or Mr. Perper, either or both, obtained franchises from the Holiday Inns of America? [96] A. Yes.

Q. And do you know, or can you tell us, how many franchises you and Frank Perper obtained in the partnership ventures? A. Well, I can relate them, I haven't counted them, but there was Gainesville, Florida, Charlotte, North Carolina, Myrtle Beach, South Carolina, Richmond, Virginia, Durham, North Carolina — I think that's it.

Q. Now, in Richmond did you ever have more than one? A. We did. We eventually had two.

Q. Now were you the minor partner, or were you the principal partner, or were you equal partners? A. We were supposed to be equal partners. It turned out that I became in some of these situations the major partner, because Mr. Perper took some of these interests in other places so I became the major partner.

Q. What other place names do you recall, did Mr. Perper take part of his interest in? A. Well, in Richmond, Virginia, for example, the first Richmond Holiday Inn, Mr. Perper actually had no interest in connection with the partnership agreement — that was in the name of Martin Perper to the extent of 15 per cent of the deal. The other five per cent was taken in the name of his wife's daughter. Those two interests totalled 20 per cent.

Q. Right. [97] A. And on the other hand, I had ten per cent of that interest, of the motel interest, and another ten per cent was in the name, in my name as trustee for a trust which I had created for my children.

Q. And the other Richmond interest, was that an interest of Frank Perper taken in someone else's name? A. The second Holiday Inn in Richmond, are you referring to?

Q. Yes. A. Frank Perper has a small interest and other parts of his interest have been taken in the name of Martin Perper and Harold Perper.

Q. Those were his sons? A. That's right, and I think Mrs. Perper has some.

Q. Mrs. Perper? A. Mrs. Perper has an interest in it some place.

* * *

[98] Q. In the Durham motel, in Durham whose interest did Frank Perper take. In whose name did Perper take his interest? A. He had it in his name and Mrs. Perper's name and a small interest in Eddy —

THE COURT: I wonder if this is not all a little beyond the issues in this case?

MR. FRIEDLANDER: Well, we have tried to establish by this witness the method of Frank Perper's participation in the operation of these hotels.

THE COURT: Very well, but I would suggest you do not spend too much time on it because I think it is not directly relevant.

MR. FRIEDLANDER: Very well.

BY MR. FRIEDLANDER:

Q. Well, now, would you tell us, did you meet or do you know Mr. Weiss, one of the plaintiffs in this case?

A. Yes.

Q. How long have you known him, or how long had you known him in 1959, is you can remember? A. I would say eight to 10 years.

Q. Was you relationship to him friendly? [99] A. Oh, yes.

Q. You weren't his counsel, were you? A. No.

Q. Just friendship? A. I knew him in a venture that I was interested in. As a matter of fact, I was secretary of a corporation that he was a stockholder in and I also knew him in his relationship to Leo M. Bernstein where he worked for a number of years.

Q. Did you know Mr. Norman Finklestein, one of the plaintiffs? A. Yes, I went to school with Mr. Finklestein.

Q. Did you know Mr. Stolar? A. Yes.

Q. Had you known him for a long period of time? A. I had known Mr. Stolar for eight, nine, 10 years.

Q. How about Mr. Broidie? A. I had never been introduced to Mr. Broidie. I had seen him, but I had never been introduced to him.

Q. And do you know, or can you tell us, how many franchises you and Frank Perper obtained in the partnership ventures? A. Well, I can relate them, I haven't counted them, but there was Gainesville, Florida, Charlotte, North Carolina, Myrtle Beach, South Carolina, Richmond, Virginia, Durham, North Carolina — I think that's it.

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BY MR. FRIEDLANDER:

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Q. Did you know Mr. Stolar? A. Yes.

Q. Had you known him for a long period of time? A. I had known Mr. Stolar for eight, nine, 10 years.

Q. How about Mr. Broidie? A. I had never been introduced to Mr. Broidie. I had seen him, but I had never been introduced to him.

Q. This is in 1959? A. Right.

Q. Now, did there come a time when you were contacted by these plaintiffs in relation to the possibility of your joining them in the building of a motel in Virginia?

A. Yes.

Q. Could you fix that time? [100] A. I would say it was sometime in the middle of April of 1959.

Q. As the result of your contact and the conversations you had with them, did you meet with them in Richmond, Virginia? A. Yes.

Q. Do you recall where that was? A. At the Holiday Inn on Brookmont Road in Richmond, Virginia.

Q. And do you remember when it was? A. I would say it was the latter part of April 1959.

Q. And who was present? A. — known as Holiday Inn No. 1.

Q. Who was present at the business meeting as distinguished from the social meeting that took place in Richmond, Virginia? A. The four plaintiffs, myself, and Mr. Frank Perper and Ralph Deckelbaum.

Q. Could you tell the Court what was the substance of the conversations that were held and any agreements that were made at that time between Frank Perper and yourself and the plaintiffs?

THE COURT: This may be a good time to suspend for our luncheon recess before this witness starts to answer the question.

* * *

[102] Q. Now, Mr. Margolius, will you tell us in substance what arrangements or agreements were made between Mr. Perper and yourself and the four plaintiffs in Richmond, Virginia at the end of April 1959? A. Yes. At this meeting which was held at that time we came to an understanding between us, that is Mr. Perper and myself —

THE COURT: You are referring to the conference in Richmond?

THE WITNESS: Yes, sir, we came to an understanding with Mr. Perper and myself and the plaintiffs, that we would enter into this joint venture agreement to develop the Holiday Inn motels at Shirley Highway and Glebe Road and to develop the Washington area with Holiday Inns.

THE COURT: Would you mind repeating that answer. I want to hear it exactly.

THE WITNESS: Yes, sir. We came to an understanding [103] to develop the Shirley-Glebe Holiday Inn which was a specific site that they had in mind when they called the meeting, and to develop the Washington area with Holiday Inns.

BY MR. FRIEDLANDER:

Q. And what were the terms, if any, that were agreed upon under which you would operate the joint venture site and also develop the area? A. The interest as between the promotion group would be fifty-fifty between us — in other words, Mr. Perper and I would share in 25 per cent —

THE COURT: Now, who do you call the promotion group?

THE WITNESS: Mr. Perper, myself, and the four plaintiffs.

THE COURT: Oh.

THE WITNESS: We would share the interest of the promotion group, fifty-fifty — in other words, one-half of the promotion interest would go to Mr. Perper and myself and one-half will go to the plaintiffs.

Now, how much of each deal or any deal would end up in the promoter's hands would depend upon the deal.

In other words, if we kept 60 per cent and gave the investors 40 per cent of the deal, then Mr. Perper and I would end up with 30 per cent and the plaintiffs would end up with 30 per cent.

[104] So, that whatever equity or promotion interest there was, that was to be divided between the Perper group, which would be me and Mr. Perper and the plaintiffs.

BY MR. FRIEDLANDER:

Q. And by the "area" what was the understanding or agreement as to what area you were referring to? A. Washington, D.C. area and the surrounding counties.

THE COURT: Well, now. Who were the investors. Were they unknown?

THE WITNESS: They were unknown, yes, sir.

BY MR. FRIEDLANDER:

Q. When you went to this meeting in Richmond, Virginia, did Mr. Perper know the plaintiffs? A. I do not believe so.

Q. Did you introduce the plaintiffs to Mr. Perper and Mr. Perper to the plaintiffs? A. Yes, sir, I did.

Q. And you knew the plaintiffs; you have already told us how long you had known them? A. Yes, sir.

Q. Do you know who their accountant was? A. Well, I knew that Julian Savage was the accountant for some of them. My recollection at this moment is no, I did not know which ones, but I knew he was accountant for [105] one or more of them.

Q. Now, the individual site that was discussed at Shirley Highway and Glebe Road, was that known to Mr. Perper, or was he familiar with the site? A. Yes, he was.

Q. And this was at the time of the meeting in Richmond? A. That's right.

Q. Were you familiar with the site? A. Yes, I was.

Q. Were you instrumental in setting up this meeting in Richmond? A. I was responsible for it.

* * *

[106] Q. Did you explain to Mr. Perper at the time of the meeting and at the time of the introduction why you were producing these people to meet him? A. Yes.

Q. What did you tell Mr. Perper at that time? A. I told Mr. Perper that these men were in the real estate business, that they had this site on Shirley-Glebe which Mr. Perper and I had been interested in a year or more, two years, before this particular time and it had been brought in by a broker several years before, that these men were in the real estate business and had this available to them and we could build this at Shirley Highway and from there go on to build others in the area, and that these men in the real estate business were capable of finding locations.

Q. Now, the purpose of the introduction was not only to introduce the parties together on a particular site, but because these people were familiar with other sites in the area? A. Well, they were real estate men in the area.

Q. Now, prior to the meeting in Richmond —

THE COURT: I am going to interrupt, if I may. You used the words "had the site available." What did you [107] mean by available? You mean they owned it?

THE WITNESS: No, sir. They had, they were capable or could get the site.

THE COURT: Well, I suppose anyone could get it.

THE WITNESS: No, this had been brought to them, Your Honor.

THE COURT: I see.

BY MR. FRIEDLANDER:

Q. Now, you had a relationship with Mr. Perper prior to the Richmond meeting, did you not? A. Yes, sir.

Q. And not speaking of the particular site locations and the motels we have discussed, did you have any oral arrangements with him for developing of motels in any particular area? A. Well, it was my understanding with Mr. Perper, on whatever motels he went into and developed, I would have an interest in it with him.

Q. How about this —

MR. GALIHER: Your Honor, I ask that that go out.

THE COURT: Objection sustained. Of course, that is conclusion — whether there was any understanding or not.

BY MR. FRIEDLANDER:

Q. I will ask you, then, what was your agreement with Mr. Perper? [108] A. My agreement? It was —

Q. In substance? A. — my agreement with him was beginning with the Holiday Inn in Charlotte, North Carolina, that I was to receive half of whatever he had in any Holiday Inn or any motel.

Q. Did you get this interest in these motels free? A. No, sir.

Q. Did you pay for your interest? A. In the first two motels that I went into with Mr. Perper, which was The Thunderbird in LaPlata and the Betsy Ross, Fayetteville, North Carolina, and this goes back, Your Honor to 1952 and 1953, in that period, I put in the same amount of cash that Mr. Perper put in, and that Mrs. Perper put in.

I put in \$10,000.00 and it was the same amount of money as he put in and I was in there as a cash investor or partner, the same as he was.

Therefore, whenever he bought a motel, we would arrange to, for example, we would go to the bank and borrow money and I would sign a note along with Mr. Perper and we would borrow the money and pay for the furniture and then, out of our share of the proceeds of the motel we would pay back the bank.

Q. Do you know of any Holiday Inn prior to 1959 in which Mr. Perper had an interest and in which you did not share? [109] A. No, he did not have any.

Q. Do you know of, or did you have any interest in any Holiday Inn prior to 1959 in which Mr. Perper didn't have a share? A. No, sir.

Q. Can you tell us whether or not when you went to Mr. Perper you discussed with him why you were bring-

ing these people down there to him, other than what you have told us? A. No, I think what I have told you is what I told him, what I have already related.

Q. All right, sir. A. That we have this opportunity to develop the Washington area.

Q. Did there come a time when this meeting in Richmond broke up? A. Yes, sir.

Q. And you each went your separate ways? A. Yes, sir.

Q. After that date did you see Mr. Perper in relation to this deal? A. Yes, sir.

Q. Did you see him once, or more than once after that? A. Well, I saw him more than once after that meeting.

* * *

[110] Q. What services did you perform in the Shirley Highway-Glebe Road site? A. Well, following our meeting in Richmond, for example, the plaintiffs during the following week, went out and took an option on the property, and, Your Honor, the property was under contract for sale, and they took an option to buy that contract for sale subject to rezoning.

In other words, the property had to be rezoned for a motel and they went out and they put up \$5,000.00 after our meeting in Richmond and took an option on the purchase from the contract purchaser.

Following our meeting in Richmond, there was a second meeting in my office, the following Saturday, in which we repeated or went over again what we were going to do and at that time, as I recall, there was a discussion of some of the plaintiffs going down to Memphis to see the Holiday Inn people.

Q. Now, did you receive a copy of the letter [111] Mr. Julian Savage wrote to the Chairman of the Board of Holiday Inns of America in relation to that Memphis trip? A. Yes, sir.

* * *

MR. FRIEDLANDER: May we offer this into evidence, if the Court please?

THE COURT: It will be admitted.

(Whereupon, Plaintiffs' Exhibit No. 4 for identification was received into evidence.)

BY MR. FRIEDLANDER:

Q. Now, do you recall, Mr. Margolius, having seen the franchise agreement that came into the possession of Mr. Perper at a much later date? A. Did I see it at a much later date, or it came into [112] possession — I didn't see the franchise agreement, no.

Q. You did not? A. No, sir.

Q. Do you know who paid for the franchise on that particular site? A. The payment for the franchise was made out of funds collected for the Shirley-Glebe Road Motel.

Q. Then you weren't familiar with the terms of Plaintiffs' Exhibit No. 1 up until recently? A. No, we received sometime in 1959 as I recall, we received a letter from Holiday Inns of America saying that a franchise was issued in the name of Harold Perper, not Frank Perper.

I don't remember seeing this until a long period after 1959.

As a matter of fact, that was not in my office and it was not in the possession of my office in 1959.

Q. Would you notice at the bottom of Plaintiffs' Exhibit No. 1 where it says under the printed portion "1" on the first page — A. Yes.

Q. "The licensor hereby grants to licensee subject to the terms and conditions hereof a non-assignable exclusive license to use said system in the construction and operation of one or more Holiday Inns within, and only within, the [113] metropolitan area or areas described as follows (hereinafter referred to as the license territory)."

THE COURT: What is the question?

MR. FRIEDLANDER: I just wanted to call his attention to that part, Your Honor.

BY MR. FRIEDLANDER:

Q. In relation to that section, was that the usual and normal clause in franchises? A. Yes.

* * *

[114] Q. Now, you were also familiar, were you not, with the provisions, the other printed part of the provision right below, the typed insertion that reads "licensor will approve the site in any other license and will not itself operate a Holiday Inn within said territory without licensee's approval so long as licensee shall perform —"

THE COURT: Is there a carbon copy or photostat of that exhibit which I can follow?

MR. FRIEDLANDER: Yes, Your Honor. Your Honor may find it easier to read the original. May I give this to you.

THE COURT: Now, where were you reading?

MR. FRIEDLANDER: Below the typed portion, the first printing below the typed portion.

* * *

[115] BY MR. FRIEDLANDER: Q. Had you any documents or papers in your possession, or in the possession of Mr. Perper that you knew of, granting any right to develop the metropolitan area prior to April of 1959?

* * *

[116] BY MR. FRIEDLANDER:

Q. Did there come a time when you had any conversations with Frank Perper relating to the development of the area after the year 1959? A. I had some conversations with Mr. Perper on an occasion or two telling him that I was of the opinion that I had an interest in the development of the area along with him.

Q. And do you recall when that was? A. To the best of my recollection, I think it was in [117] the spring of

1962. There was an earlier occasion or two that I mentioned it to him, but I may have been brushed off.

Q. Do you recall what he said in reply to your first and second inquiries in relation to the development of the Washington metropolitan area? A. Well, frequently at those particular times Mr. Perper was not talking to me and anything I would say to him would receive no reply.

Q. No answer? A. No answer. I got no satisfactory answer from him.

Q. I see. Do you know and could you tell the Court whether or not the Holiday Inn at Glebe Road and Shirley Highway was completed? A. When it was completed?

Q. No, whether it was completed. A. Oh, yes, it was completed.

Q. Can you tell the Court whether to your knowledge a franchise was issued and the necessary joint venture agreement for that particular site completed? A. Yes.

Q. Who prepared that particular joint venture agreement for that site? A. Mr. Deckelbaum in my office.

Q. Did you attempt in the preparation of that document to act for your associates? [118] A. I acted for the Vendor at Shirley-Glebe Road.

Q. And who were you acting for when you prepared the joint venture agreement for that particular site? A. In that particular —

* * *

THE WITNESS: We were acting for, or we were drawing them for the joint venture of Shirley-Glebe Road specifically.

BY MR. FRIEDLANDER:

Q. Were there any attorneys representing the investors as distinguished from the promoters? A. No, sir.

Q. You were representing and drawing the agreement for all? A. Right, sir.

Q. Did there come a time when the motel began its operation? A. Yes, sir.

Q. And is it operating today? [119] A. Yes, sir.

Q. Are there any problems connected with the ownership of that motel? A. Connected with the ownership?

Q. Yes. A. No, sir, not as far as I am concerned.

Q. As to the motels in the metropolitan area of Washington which were built later, are you familiar with the location of such motels? A. Yes, sir.

Q. Could you tell the Court the ones that you have seen? A. Well, there is a Holiday Inn at the Catholic University.

Q. Yes? A. There is a Holiday Inn at Scott Circle and there is a Holiday Inn at College Park.

There is a Holiday Inn in Fairfax County, Virginia.

There is a Holiday Inn at Andrews Air Force Base.

I have not seen that yet, however, to answer your question, and there is a Holiday Inn in Roslyn, Virginia.

Q. Have you discussed with Frank Perper any of these Holiday Inns in reference to ownership? [120] A. No. The only reference I had in our discussion, the discussion that I had with Mr. Perper, was back in 1961 and 1962, and in 1962 I sent him a copy of this letter which I have identified, the letter of January the 6th, of which I sent him a copy telling him I found this in my file.

Q. I hand you a letter which is dated January the 9th, or rather a carbon copy, and I ask you whether or not you recognize that? A. Yes. This is the letter I am talking about.

MR. FRIEDLANDER: May we have that marked as Exhibit 5 for identification.

(Whereupon, the letter referred to was marked for identification as Plaintiff's Exhibit No. 5.)

MR. FRIEDLANDER: And would you mark this is as 5B, also.

(Whereupon, the carbon copy of the letter referred to was marked for identification as Plaintiff's Exhibit No. 6.)

MR. FRIEDLANDER: Now, may I show these to counsel?

THE COURT: Yes. Well, let us proceed, gentlemen.

MR. FRIEDLANDER: I would like to offer into evidence Plaintiffs' Exhibits 5 and 6.)

THE COURT: Admitted.

(Whereupon, Plaintiffs' Exhibits 5 and 6 were [121] admitted into evidence.)

* * *

[122] Q. Mr. Margolius, did you ever receive a reply, or is there any writing, did you receive any reply in writing to that letter? A. I have never heard of a reply to it. I mean, I don't know of any reply to it.

Q. You didn't get any, anyway? A. No, it wasn't seen by me.

Q. Well, you never saw any reply? A. No.

Q. Did you ever learn of any oral reply, word of mouth reply? A. No. The only time I heard of any reply was during the deposition when Mr. Galiher referred to some letter in the file of 1959, I believe, but I have never seen that myself.

* * *

[123] CROSS-EXAMINATION

BY MR. HILLAND:

Q. Mr. Margolius, prior to that letter of January 9, 1962, which is marked as Plaintiffs' Exhibit No. 5, had you asserted to Frank Perper a claim, namely the claim that you make in that letter, against him? [124] A. I had mentioned it to him, yes.

Q. Yes. Had you had any problem in the matter of asserting it. That is to say, had you had any problem substantiating your claim? A. Well, I don't know what you mean by problem. All I know is that half the time between 1959 and 1962 Mr. Perper wasn't talking to me, so if you talked to him you were talking to the wall and you would get no reply.

Q. Prior to the letter, had you had any difficulty finding the enclosure which is marked as Exhibit No. 6? A. Oh, I didn't discover that until the time I wrote that let-

ter, because I had come across it in my file though I didn't realize that I had it.

Q. And was it as a result of discovering that that you wrote that letter to Mr. Perper? A. That's right.

Q. You stated on direct examination by Mr. Friedlander that your professional association with Mr. Frank Perper began in 1951, I believe? A. I think that is the year, yes.

Q. And how long did your relationship with Frank Perper as attorney and client continue purely in that relationship? A. A very short time.

Q. And then, what was the first business relationship [125] that you had with Mr. Perper? A. I would say that was in 1952 or maybe 1951, but to the best of my recollection 1952, when we entered into this partnership for the Thunderbird in LaPlata, Maryland, which was a motel.

Q. Was there a partnership, or what was the nature of your relationship in that venture? A. We were equal partners.

Q. And were you promoters, or investors, or both? A. That motel was not, had no so-called promoters or investors. Everybody was, everybody who went into it, put the same amount of money in it.

Q. And where was that? A. LaPlata, Maryland.

Q. And how much was the investment of each party? A. Well, I put in \$10,000.00 for a ten per cent interest.

Q. What was the next business venture that you entered into with Mr. Perper? A. The Betsy Ross Motel in Fayetteville, North Carolina.

Q. What was the nature and extent of your relationship with him in that proposition? A. Well, we were equal partners, each of us investing the same amount of money in cash.

[126] Q. And what was your next business relationship with him? A. We from there went into a motel in South Carolina.

Q. What kind of motel was that? A. Independent. It

wasn't connected with any chain as weren't the Thunderbird or the Betsy Ross. They were independent.

Q. And what was the nature of your relationship with him in that transaction? A. In that transaction there was a man by the name of Harry Karpel and I received an interest in the motel for performing the legal work.

Q. From whom? A. Well, I would say it came from both Mr. Karpel and Mr. Perper.

Q. All right. Well, what was the next business relationship that you had with Mr. Frank Perper? A. The next motel that was built was in Florida in Perry, Florida.

Q. What kind of a motel was that? A. That was a small motel of 30 rooms or 31 rooms.

Q. Were you a promoter, or investor, or both? A. No, I wasn't an investor. No, as a matter of fact, there wasn't any investors the way that was set up. I mean, the way it was set up was Frank Perper, Mr. Perper and Harry Karpel and other interests flowed from these [127] interests.

Q. What was the next motel business that you went into with Mr. Frank Perper? A. It was a small motel in Gainesville, Florida, an independent. We subsequently built a Holiday Inn there, but this was independent.

Q. What was the nature and the extent of your relationship in that venture? A. Partners.

Q. To what extent? A. I think I had either 15 or 20 per cent interest in that.

Q. Was that for promotion, or for work, or for investment? A. I would say it was everything — not investment, no.

Q. Not investment? A. No.

Q. And what was the next motel that you went into with Mr. Perper? A. The Holiday Inn of Myrtle Beach.

Q. What was the nature and the extent of your relationship with him in that venture? A. As a partner, I received a part of his interest.

Q. Received part of his interest? [128] A. Yes.

Q. What was the next transaction you went into with him? A. Charlotte, North Carolina.

Q. When was that? A. I would say that was in 1956 or 1957.

Q. On direct testimony by Mr. Friedlander this morning he asked you if there was any general written partnership agreement between you and Mr. Perper and your answer was no. A. That's right.

Q. Was there ever an oral partnership, or general partnership agreement between you and Mr. Perper? A. Beginning with the Holiday Inn in Charlotte.

Q. Can you fix the year? A. Well, it was 1956 or 1957.

THE COURT: Was that written, or oral?

THE WITNESS: No, oral.

BY MR. HILLAND:

Q. What was the nature and extent of that general partnership that you entered into with Mr. Frank Perper at that time?

MR. GALIHER: I would object to that question, Your Honor.

THE COURT: On what grounds?

[129] MR. GALIHER: On the ground that it is an oral contract and therefore unenforceable.

THE COURT: I think it is irrelevant anyway and I will sustain the objection on that ground.

MR. HILLAND: May I say this, Your Honor?

THE COURT: Yes?

MR. HILLAND: It seems to me that this witness is party to a cross-claim that is broader than the claim of plaintiffs in this case. He is party to the joint venture agreement asserted by the plaintiffs and independently of that he has this general interest.

THE COURT: All I had in mind that this relates to an entirely different transaction.

MR. HILLAND: Yes, that's right, but it seems to me, Your Honor, that this plaintiff, or this witness, has a broader claim than that which has been asserted by the plaintiffs.

THE COURT: Well, maybe that is so, but I didn't so understand it. I understood his claim was the same as that asserted by the plaintiffs, namely, he claims to be entitled to a share in all the Holiday Inns developed by Defendant Frank Perper in the Washington metropolitan area.

MR. HILLAND: Yes.

THE COURT: But this is something else.

MR. HILLAND: But, in addition to that joint venture between the plaintiffs, there was the agreement [130] between this witness, Mr. Margolius, and Mr. Frank Perper, Your Honor. There was this oral general partnership agreement between Mr. Margolius and Mr. Perper.

THE COURT: Yes, but is that involved in this case?

MR. HILLAND: I think it is, Your Honor, because it is something in addition. It verifies his claim that there is something that goes beyond.

THE COURT: I understand, but did you make any claim based on that other matter?

MR. HILLAND: Yes, we did. We urge it in our answer and cross-claim and also in the pre-trial statement, pre-trial Order, I should say.

THE COURT: Well, that's it, I want to look at the pre-trial statement and if that is so, I will allow it, but would you mind trying to locate where the matter is covered in the pre-trial statement?

MR. HILLAND: On page 11, Your Honor, in the last paragraph.

MR. GALIHER: Is that the pre-trial Order, or the pre-trial statement?

MR. HILLAND: The pre-trial Order. It was in both, as a matter of fact.

THE COURT: All right. I will allow the question. The objection is overruled.

[131] BY MR. HILLAND:

Q. Will you state, Mr. Margolius, what the oral general partnership was between you and Mr. Frank Perper commencing at the time that you have stated in your tes-

timony? A. That I would have an equal interest with him in any motels that were developed.

THE COURT: Now, when was that entered into?

THE WITNESS: That was in the Charlotte deal, Your Honor. That was 1956 to 1957 — 1957 was the year, I think.

BY MR. HILLAND:

Q. Now, from that time until 1959, did you own any or have any interest in any Holiday Inn motel in which Frank Perper did not have an interest? A. No, sir.

Q. From that time until 1959 did he have an interest or ownership in any Holiday Inn motel in which you did not have an interest? A. To the best of my knowledge, no.

Q. And from the time you first went into the motel business with Mr. Perper did you have any ownership interest in any motel in which he did not have an interest also? A. No, sir.

Q. Did he have an ownership interest in any motel in [132] which you did not have an ownership interest during that period? A. Not to my knowledge.

THE COURT: Did you put any money into the motel at Shirley Highway and Glebe Road?

THE WITNESS: Your Honor, the promotion group borrowed \$50,000.00 from one of the local bankers. They put that up and we also, as we were a promotion group, out of these distributions paid off some of the furnishings — I think the carpet contract which was a substantial amount.

THE COURT: The promotion group borrowed money — were you one of the borrowers?

THE WITNESS: Yes, sir.

THE COURT: Very well.

BY MR. HILLAND:

Q. Now, when you said that the promotion group borrowed money, what did you mean by that? A. I mean the group that put the deal together, so to speak, the plaintiffs and Mr. Perper and myself.

Q. And did you all sign that note? A. I don't know, Mr. Hilland, if I actually put my signature on the note. I don't know, but it was paid back out of the proceeds which were coming to me out of the joint venture.

* * *

[133] BY MR. HILLAND:

Q. Now, prior to the time Mr. Weiss contacted you about the site at Shirley Highway and Glebe Road, had you and Mr. Perper made any search for motel sites in the Washington Metropolitan area? A. Yes, sir.

Q. When? A. For a number of years prior to 1959.

Q. Now, can you fix the time approximately when you began, when you and Mr. Perper began to search for sites in this area? A. I would say 1957 to 1958.

Q. And was your search successful, or unsuccessful? [134] A. Unsuccessful.

Q. Do you remember what particular sites you and Mr. Frank Perper viewed? A. Yes, sir.

Q. Would you state them, please? A. Yes, sir. We had a lease, a land lease, drawn for a motel site in Bethesda where the "Bethesdan" now is. The lease was negotiated and drawn and it was not consummated because the attorney for the land owner refused to subordinate the land to a building mortgage, so that fell through. Ultimately, it was sold and the Bethesdan was built there. We also talked to the man who owned the land where the Charterhouse is on New York Avenue and Bladensburg Road. He wanted us to develop it and we met with him and that meeting was in Mr. Perper's apartment with his attorney and we felt the price for the land was too expensive at the time.

Ultimately, the Charterhouse was built there and is now operating. We had negotiations with some people who ultimately — I don't know whether they did it themselves, but ultimately there was built the Iwo Jima Hotel on Route 50 in Arlington. The owner of that ground had a package, he had the plans [135] and he had the financing arranged and we had a meeting in my office and they

wanted \$200,000.00 for that deal, but because of certain construction difficulties which Mr. Perper felt existed, that deal didn't go through.

There were a number of other spots around the area that we explored. On one occasion, as a matter of fact, Mr. Perper and I and a real estate man, an investor who wanted to buy ground and lease it to us, spent an afternoon going out Wisconsin Avenue in Montgomery County, looking for likely spots for a Holiday Inn. Nothing came of that, but we were looking throughout the Washington area for a location to build a Holiday Inn.

Q. And did you look elsewhere with Mr. Frank Perper? A. You mean out of the City of Washington?

Q. Yes. A. Oh, yes.

Q. Where? A. Well, we went on one occasion to Orlando, Florida, for example, to see a piece of ground down there that had been offered to us for a motel. We went down there, Mr. Perper and I, and looked at that piece of property.

On one occasion I went with Mr. Perper out to New Jersey. I don't remember the name of the town, but [136] some town in New Jersey where we thought we might be able to work out a deal for a Howard Johnson restaurant on New Jersey Turnpike, and there were other places that we went to look for a site, but for the most part, however, Mr. Perper did the searching for sites.

Q. Now, after this general oral partnership arrangement that you had with Mr. Perper occurred, what was the nature and the extent of your duties under your business relationship with him. Was it limited to legal work? A. Oh, no, no.

Q. What kind of services did you render? A. Well, for example, I helped draft plans for the building, I helped lay out the building. I even put furniture in the building, or bought furniture for the building, rather. I did everything that a owner of a motel would do in the creation of a project, far removed from legal work. As a matter of fact, as a lawyer I wouldn't undertake to do that work.

Q. When you were first contacted by the plaintiff, Robert Weiss, where were you? A. When Robert Weiss first approached me — you mean the first time he talked to me about it?

Q. Yes, in what place were you, in Washington, or elsewhere? [137] A. Oh, it was in Washington.

Q. And where was Frank Perper at that time? A. If my recollection served me correctly, he was in Miami.

Q. How long had he been there? A. Oh, he was down there for the winter.

Q. For the winter? A. Yes.

Q. Now, after Mr. Weiss contacted you, was there any particular reason in your mind why you should contact Mr. Frank Perper in preference to any other person in connection with the contact that Mr. Weiss had made to you?

MR. GALIHER: I object, if Your Honor please.

THE COURT: Objection sustained.

BY MR. HILLAND:

Q. Well, before you contact Mr. Frank Perper, did you think of contacting anybody else as joint venturer, as promoter?

MR. GALIHER: I object to that.

THE COURT: Objection sustained.

BY MR. HILLAND:

Q. When you contacted Mr. Frank Perper did you contact him by letter or by telephone? A. I would say it was by phone.

Q. Do you remember what the conversation was that [138] you had with him? A. No. I know that Mr. Perper was coming up to Richmond, Richmond number one was being completed, and Mr. Perper was coming up from the south and I was to meet him in Richmond that weekend, on a weekend, and I just arranged to have these plaintiffs meet him during that meeting at the time.

Q. Did you give Mr. Perper advance notice about the meeting with the plaintiffs in this case, at the time that took place? A. I am sure I cleared it with him, otherwise we wouldn't have had the meeting set up.

Q. Did you state anything to him concerning how Mr. Weiss had contacted you and the opportunity his contacting you presented to you and Mr. Perper? A. I discussed that with him in Richmond when I saw him.

Q. What did you tell him? A. Well, I discussed generally the opportunities this presented to get into the Washington market.

Q. Did you have any conversation with him about your and his prior efforts to get into the Washington market with Holiday Inns? A. Well, I had told him that this was the very site that we had, that had been presented to us sometime before.

[139] MR. HILLAND: Would Your Honor indulge me for a moment, please?

THE COURT: Yes, very well.

BY MR. HILLAND:

Q. You mentioned by name six Holiday Inn motels in the metropolitan area in addition to the Shirley-Glebe Holiday Inn. Is there also one at New York Avenue that you did not mention? A. That is just being built.

Q. That is under construction now? A. That's right, yes.

Q. I understand.

THE COURT: Where on New York Avenue?

THE WITNESS: Blandensburg Road, right across from the Charterhouse, Your Honor.

THE COURT: Right across from?

THE WITNESS: From the Charterhouse.

THE COURT: Oh, yes. Did I understand correctly that you had a separate written agreement as to each of the Inns in which you participated with Mr. Perper?

THE WITNESS: Yes, sir.

THE COURT: Except the ones in the Washington area?

THE WITNESS: Yes, well — he doesn't consider me a partner in the Washington area.

THE COURT: Yes, I understand, but as to the others [140] you have a separate written agreement?

THE WITNESS: Yes.

THE COURT: As to each?

THE WITNESS: Yes, sir. Let me say this, Your Honor: With respect to the first one, the Betsy Ross, for example, which goes back to 1952, that was represented in a trust instrument which was drawn, which showed our interest. In other words, it was not what you call a joint venture. It was a trust instrument.

THE COURT: There was some kind of a written instrument?

THE WITNESS: Yes.

THE COURT: Showing your interest?

THE WITNESS: Yes.

THE COURT: Separately as to each of the individual motels?

THE WITNESS: Yes, sir.

BY MR. HILLAND:

Q. Mr. Margolius, you have stated during your examination by Mr. Friedlander that your office did not have the franchises for the Shirley-Glebe site? A. That's right, not until some later date.

Q. Do you remember how long after that franchise you first had a copy of it? A. In the early part, as I recall, of 1960, that [141] lease was being negotiated for the rental of Glebe Road. Glebe Road is leased out to a tenant and that lease is being negotiated. The document was not in our hands at that time because the respective tenant's attorney wanted to see the franchise agreement and it wasn't available.

A request had been made of Mr. Savage to send it over, but it wasn't in our hands and so that form of the franchise agreement which was shown to the tenant was simply a form not pertaining to Shirley-Glebe. Sometime after, and how long after I don't know, and Mr. Deckelbaum will probably have the answer to this, the franchise agreement was sent over.

Q. Did you later learn where it had been up to that time? A. In Mr. Savage's office.

* * *

THE COURT: Just a moment, I would like to clarify

this. I asked you previously about a separate written agreement with Mr. Perper as to the motel or Holiday Inn at Shirley Highway and Glebe Road. Did you not have a separate written agreement for that?

THE WITNESS: We had a joint venture agreement on that location, but he is not a party to it.

[142] THE COURT: Yes, but you did have a written joint venture agreement?

THE WITNESS: That's right, yes, sir.

* * *

[143] BY MR. HILLAND:

Q. Now, in the final draft Mr. Frank Perper is not named as a joint venturer, is that correct? A. That's right.

Q. With respect to the Shirley-Glebe site? A. That's right.

Q. What is the reason for that? A. His interest was put in the name of Harold Perper.

Q. Now, did Harold Perper participate in any way in connection with the putting together, as the expression goes, of the deal for the Shirley-Glebe Motel? A. No, sir.

* * *

[144] Q. Who attended meetings representing the interests of Frank Perper, that was placed in the name of Harold Perper? A. Frank Perper.

Q. Would you state as briefly and succinctly as you can any activity he engaged in in connection with the organization and developing and building and leasing of the Holiday Inn at Shirley-Glebe? A. He took part in the arrangements for the employment of an architect. He took part in the arrangements for obtaining of a builder for the project and he participated, or as a matter of fact, took care of the purchasing of the furniture for the Shirley-Glebe deal.

While he was out of town, in Florida, he arranged for the signs to be put up on the highway and he also attended [145] meetings which were held from time to time.

Q. Meetings of whom? A. Of the joint venturers of

the overall picture, the joint venturers of the Glebe Road deal.

Q. Now, when that motel was leased to an operator, who first suggested that the motel be leased? A. Mr. Perper.

Q. Which Mr. Perper? A. Frank Perper.

Q. And who retained the broker to obtain the tenant to operate that motel? A. Mr. Frank Perper.

Q. Did he participate in the negotiations leading up to the leasing of the motel to the operator? A. In the preliminary stages, yes.

Q. When you say in the preliminary phases, what do you mean? A. While he was — well, let me put it this way: The final lease was negotiated and drafted in my office. He was not present during the time it was actually knocked out by the directors.

Q. Where was he living at that time? A. In June of 1960 I would say he was living in Florida.

Q. Now, did you have any conversation with him from [146] time to time about the interest in the Shirley-Glebe deal, Holiday Inn, in which he referred to the 10 per cent interest that was in the name of his son, Harold? A. His son, Harold, had a five per cent interest, and Mrs. Perper had a five per cent interest.

Q. His son, Harold, had five percent and Mrs. Perper had five per cent interest? A. Yes, his wife had five per cent interest.

Q. Yes, and did he in any way at any time refer to his son's interest? A. Well, he always referred to it as his son's.

* * *

[148] BY MR. HILLAND:

Q. Mr. Margolius, referring to Plaintiffs' Exhibit No. 11 for identification, that is in the handwriting of Frank Perper, is it not? A. Yes, sir.

Q. Now, in the last paragraph referring to Shirley-Glebe Motel, this letter states, "Jerry -- they are up to the first floor, so let me know immediately on this." Now, can you fix the time when the Shirley-Glebe Holi-

day Inn was up to the first floor in construction? A. I would say the latter part of 1959, or the first [149-A] month or two in 1960.

MR. HILLAND: Well, then I would offer this into evidence, Your Honor.

THE COURT: It will be admitted.

(Whereupon, plaintiffs' Exhibit No. 11 for identification was admitted into evidence.)

MR. GALIHER: May I renew my objection, Your Honor?

THE COURT: Yes. I am only admitting it to show that he claimed he owned this percentage.

MR. GALIHER: Yes.

THE COURT: That is the only purpose for which I am admitting it.

MR. GALIHER: Yes.

* * *

CROSS-EXAMINATION

BY MR. GALIHER:

Q. Mr. Margolius, you told us before lunch that you had an interest in the Holiday Inn motels in Gainesville, Florida, Charlotte, North Carolina, Myrtle Beach and Durham, North Carolina, as a result of your relationship with Mr. Perper, if I understood that accurately. A. Not that I have — I had. I don't have it now.

Q. You had? [149-B] A. Yes.

Q. All right. Now, let us talk about the motel at Gainesville, Florida. How large a motel was that? A. It ended up about 140 rooms.

Q. And what interest did you have in that motel? A. Twenty per cent.

Q. Did you put any money into that motel? A. I think Mr. Perper and I bought the furniture for that motel.

Q. Did you put anything else into it? A. No, no.

Q. And how about the Charlotte motel — how large was the one at Charlotte? A. That was 54 or 60 rooms.

Q. Did you put any money into that motel? A. As I recall it, the only money that went into that would be to pay for some of the obligations.

Q. Pardon me? A. To pay off some of the obligations. No cash was put into it, no.

Q. By the way, did you draw all of the legal agreements for the motel at Gainesville? A. Yes.

Q. Did you draw all of the legal agreements for the motel at Charlotte? [150] A. As I recall it, yes.

Q. And what about Myrtle Beach, how large was the Myrtle Beach, South Carolina, motel? A. About 56 rooms, as I recall it — 56, that was small.

Q. Did you put any money yourself into that one? A. Very little.

THE COURT: Well, now this may be a good time for us to take our mid-afternoon recess.

(Whereupon, a short recess was taken.)

THE COURT: You may proceed.

BY MR. GALIHER:

Q. Mr. Margolius, at the mid-afternoon recess, I was asking you about several of these motels that you told me you had put some money into. Now, if I understood you correctly, you said that you put some money into the Charlotte motel for the furniture. Did I understand you correctly? A. I don't have a clear present-recollection of Charlotte.

Q. But you did at Gainesville? A. Yes, I did at Gainesville.

Q. When you say you put money into the furniture, isn't it a fact that you borrowed the money from a bank and together with Mr. Perper you used that to purchase the furniture? A. Well, in my way of thinking that is putting money into a venture. It was borrowed money, of course.

[151] Q. Now, I believe we were talking about Myrtle Beach at the recess. How large a motel was Myrtle Beach? A. I believe that was either 54 rooms or 60 rooms.

Q. And what was your interest in Myrtle Beach? A. Five per cent.

Q. And do you recall that you drew all of the legal

documents with respect to Myrtle Beach? A. Yes, I think so.

Q. Did you put any money into Myrtle Beach? A. I put some in, yes.

Q. Was that borrowed money, or your own money? A. My own money.

Q. How much did you put into Myrtle Beach? A. It wasn't very much. It was a small amount.

THE COURT: Well, what do you call small?

THE WITNESS: A thousand dollars, probably.

BY MR. GALIHER:

Q. And all three of those have been sold and you have realized your interest from each? A. Charlotte was sold and the money that was gotten from the sale was used to build a second Holiday Inn in Charlotte.

Q. And you have an interest in the second Holiday Inn in Charlotte? A. That's right.

[152] Q. What is the percentage of your interest? A. It is a little more than twelve and a half per cent.

Q. Does Mr. Perper have any interest in that Charlotte Holiday Inn? A. Yes, he does.

Q. How many rooms does it have? A. A little over 100, I think.

Q. And when Gainesville was sold, what did you realize from that sale? A. I don't know, right here, I don't know.

Q. Approximately? A. I don't know.

Q. \$100,000.00? A. No — well, let me say this: There is a large second trust note. If you include the second trust note, the answer is yes.

Q. How about Charlotte? You say you put that money into Charlotte number two? A. That's right.

Q. Do you have any idea what it amounted to? A. Frankly, I don't.

Q. And what about Myrtle Beach?

MR. HILLAND: If Your Honor please, I am going to object. I don't see the relevancy of all the profits made out of the hotels which have been sold, or motels.

[153] THE COURT: Well, I think this is permissible cross-examination.

THE WITNESS: The only thing I realized out of Myrtle Beach is some small amount which is realized each month on the payment of the second trust.

BY MR. GALIHER:

Q. How many years will that continue? A. I imagine it has five or six more years.

Q. Now, you said that Mr. Perper made an agreement with you that whenever he went into one of these projects you would have part of it, is that correct? A. Yes, at the time of Charlotte he made the agreement with me that whatever he did, I would have the same amount.

Q. Was that ever reduced to writing? A. No, sir.

Q. Did you make any memorandum of that conversation? A. No, sir.

Q. Did you ever send a letter setting forth what you understood the agreement was, that was supposed to have been reached? A. No, I didn't think I had to.

Q. How large is Durham, North Carolina? A. One motel -- we have two of them there -- one motel is 130 rooms and the other is 100.

Q. And did you handle all of the legal work in [154] connection with those two motels? A. Yes, sir, I did.

Q. And what is your interest in the first motel? A. Thirteen and a half per cent. Mr. Perper is not in Durham.

Q. Was Mr. Perper in that motel at first? A. Yes, sir, he was.

Q. Is Mr. Perper in the second Holiday Inn motel in Durham? A. No, sir.

Q. What interest did Mr. Perper have in the first motel? A. He and Mrs. Perper had a combined interest, in which Mr. Worfman had a combined interest of about 17 percent.

Q. Do you know when that interest was disposed of? A. In the fall of 1959.

Q. Did you preside at a meeting at which Mr. Perper was asked to sit outside, or to step out, concerning the purchase of his interest in Durham hotel number one?

A. I can't answer that without an explanation. I don't think he was asked to step out of anything.

Q. Well, is it not a fact that he was asked — A. Well, excuse me, excuse me.

Q. Is it not a fact that he was asked to step out of [155] a stockholder's meeting with respect to Durham number one, and in his presence the stockholders who remained decided to pay him for his interest? A. May I explain this? I can't answer it categorically.

THE COURT: You can answer it in your own way.

THE WITNESS: Mr. Perper — we were building the Durham Holiday Inn. The investors in Durham were all friends of mine. Before the job was finished, Mr. Perper insisted that unless the place was leased or sold it would go under, his purpose being to sell out and get out of the deal.

He wrote me a letter in the spring, the early spring of 1959, in which he wanted to sell his interest and I answered him and told him it was unfair to those people who had invested money on the representation that he was a well-recognized motel man, to want to get out before the job was even finished. We then had a meeting in my office in the late summer of 1959. He still insisted that if they didn't sell or lease, that they were going to lose everything that they had put into the deal.

His objection was that I had taken over, Ralph Dec-kelbaum and I, had taken over the operation of that motel, not as a lawyer, but everything that had to do with [156] it, and he objected to it and said it was going to be a washout, so it ultimately got down to where one of the investors made the point to him when he was in the room, which was in my office, and they said well, it appears to be that we either have to choose you or choose Mr. Margolius, and the result was that they chose Mr. Margolius and he was ultimately paid out.

Q. Did you not preside at that meeting, Mr. Margo-
lius? A. It was held in my office.

Q. Did you tell Mr. Perper that you were going to
take over? A. There was no one else to take over, so
the logical one to take over was me.

Q. Didn't you also have some difficulties over the
operation of the Richmond motel number one? A. No, I
wouldn't say so.

Q. Didn't you have some discussions about it at a
meeting in 1959 — a meeting at the Willard Hotel? A.
Yes.

Q. Was that held for the purpose of discussing Rich-
mond number one? A. Yes, it was.

Q. And was that a stockholders' meeting? A. That
was not operations, that was construction.

Q. Well, didn't some difficulties occur at that meet-
ing [157] as far as you and Mr. Perper were concerned?
A. Yes, there were some problems raised by Mr. Per-
per — yes, but it had nothing to do with the operation.
That was the construction of it.

Q. And you said that from 1959 until 1962, I think
you said half the time Mr. Perper wasn't speaking to you.
Did I understand that correctly? A. That is correct.
After 1959, this meeting that I was talking about at Dur-
ham, he refused to come to my place.

Q. Well, is it not the fact that the problems with re-
spect to Durham actually started sometime around
George Washington's Birthday in February of 1959? A.
I have correspondence with respect to Durham, Mr.
Galiher, or my counsel has it.

Q. I'm just asking you to the best of your recollec-
tion? A. Well, I'd say it started actually March of 1959.

Q. March of 1959? A. Yes.

Q. In other words, that would be about a month you
took these gentlemen to Richmond and met Mr. Perper,
isn't that right? A. Yes, that's right, that's right. These
problems, may I say this — those problems in my judg-
ment had been resolved as of April 1959.

Q. But insofar as he was concerned — ?[158] A. Yes, I think so.

Q. But you say he hardly spoke to you from then on? A. No, no, I am talking about the meeting in my office in the fall of 1959. You see, he wanted to sell Durham and I wrote him a letter, a very long letter, which counsel has, and after that there was no problem between us, but then again thereafter in the fall of 1959 he started that this business in Durham is going to fail and he wants to sell or lease it and then we had a meeting in my office with the investors in Durham and it was then that he was bought out. As a matter of fact, in March he wanted to sell his interest in Durham for \$30,000.00 and they bought him out in — oh, I don't know, October sometime, September, October, for \$40,000.00.

Q. Mr. Margolius, during the entire time we have been talking about, with respect to the development of Gainesville, Charlotte, Myrtle Beach, Durham, and so on, you were maintaining your law office and practicing law full-time, is that correct? A. Yes, sir.

Q. And you were and have been all during that period extremely active in the Courts? A. Well, relatively speaking.

Q. Well, did you do the work that was necessary to be [159] done, the legal work, or did you have those in your office, from time to time, working on some of this paper work in connection with entering into some of these joint ventures? A. I did some, Mr. Deckelbaum did a great deal of it.

Q. And all of the paper work that you have described in connection with the various joint ventures were prepared by you or by Mr. Deckelbaum in your office? A. Right, except for Richmond number two. That was done by Mr. Foreman.

THE COURT: By who?

THE WITNESS: By Mr. Foreman.

BY MR. GALIHER:

Q. Mr. Perper, is this not correct, at no time had his own lawyer with respect to these joint ventures. You

were his lawyer, were you not? A. I was his lawyer and his confidant, his friend and everything else that goes along with it.

Q. Now, Mr. Margolius, on October the 12th, I sent a letter to Mr. Friedlander and Mr. Hilland which concluded as follows:

"I respectfully request Messrs. Margolius and Deckelbaum to produce their complete files pertaining to the motel at Shirley Highway and Glebe Road."

MR. GALIHER: Mr. Hilland, may I ask that you produce that file. Do you have it here?

[160] MR. HILLAND: I have not.

BY MR. GALIHER:

Q. Mr. Hilland says that he has not, so I now call upon you, Mr. Margolius, to produce the file — we requested in order that I may ask you certain questions about them.

THE WITNESS: I don't have it here. I didn't know even that that letter went out, Your Honor.

THE COURT: Well, you don't have it here?

THE WITNESS: No, sir.

BY MR. GALIHER:

Q. Would you mind bringing that tomorrow morning, if you please? A. Yes, certainly.

Q. Thank you, sir. You have had no experience in the development or planning of motels until the time you had met Mr. Perper, is that a fact? A. That is a fact.

Q. Were any of the franchises of the places you have made reference to, Gainesville, Charlotte, Myrtle Beach or Durham, in your name? A. Gainesville was in my name.

Q. Your name solely? A. Yes. The property —

Q. No, I am just talking about the franchise from the Holiday Inns? [161] A. Oh, oh — Durham; not solely. My name is on the franchise in Durham with Mr. Perper and one of our other partners — Hardy.

Q. And I assume that the other three — Gainesville, Charlotte and Myrtle Beach — those franchises were not

either in your name, nor was your name on the franchise? A. That's right.

Q. Do you recall who the franchise holder or holders were in respect to those three? A. Frank Perper.

Q. Is it not a fact, Mr. Margolius, that Mr. Perper had never met any of the four gentlemen who are plaintiffs in this action until you introduced them to him at the Holiday Inn in Richmond, Virginia, in the month of April? A. I would say that is true.

Q. Did any of those gentlemen, to your knowledge, have any experience or have they ever been in the hotel or motel business? A. Not to my knowledge.

Q. Now Mr. Margolius, you have told us about a conversation that took place at that time. Do you recall how long you men were together on this day that you were in Richmond? A. I would say several hours.

Q. Did you reduce to writing any memorandum concerning [162] what had taken place at that time? A. No, sir.

Q. Or did you later reduce to writing any memorandum concerning what had taken place in this meeting? A. No, sir.

Q. It is the fact, is it not, Mr. Margolius, that at the time you had this first meeting in April, in Richmond, there was not even an option in existence which would tie up the property on which the motel was later constructed? A. No, and that option was obtained two or three days later.

Q. It is the fact, is it not, that the discussion centered around a plot of ground which you have indicated that both you and Mr. Perper were familiar with and which turned out to be the site at Shirley-Glebe? A. Right.

Q. Now, at that time there was not an option which tied up the property pending the obtaining of the zoning, was there? A. They had negotiated or discussed the matter with a real estate broker prior to the meeting.

Q. Now, there was no option in the sense of that term, that they had, that would have legally bound them—

in other words, there was no legally binding option secured until after that meeting, is that not correct? [163] A. That's right.

Q. Now, when next did you meet with the gentlemen who are plaintiffs in this case? A. The following Saturday at my office.

Q. And who was present at that time? A. The four plaintiffs, as I recall, and Frank Perper, Julian Savage, myself and Ralph Deckelbaum.

Q. By the way, at the time of the first meeting, you had no idea as to investors who might be interested if the option was secured on the property, did you? A. No, we never do.

Q. Had the option been secured on the occasion of the meeting in your office the following Saturday? A. My recollection is, my best recollection is, that they had tied it up.

Q. Who had tied it up, who had taken the option? A. The plaintiffs. I don't know who, but the document is here some place.

Q. They had entered into an agreement, or an option — A. That's right.

Q. With whoever had control of that property? A. That's right, whoever had the contract, the contract purchaser.

Q. Do you recall any other meeting that took place after that in either the month of April or the month of May? [164] A. I can't pinpoint the date. We had other meetings. We had a meeting on one occasion over there at the architect's offices, Mr. Kasner's office. We had a meeting in Mr. Weiss' office and we had several meetings up in Mr. Weiss' office, as a matter of fact.

Q. Was Mr. Perper present at either of those meetings? A. He was present at least one meeting that I know of in Mr. Weiss' office.

Q. Was any memorandum ever reduced to writing as to that took place at any of these meetings? A. No, I have no memorandums of any meetings that were held.

Q. Now, there has been introduced into evidence in this case a letter signed by Mr. Julian Savage to Mr. Kenneth Wilson under date of June 6, and you received a copy of that letter, did you not? A. That's right.

Q. You knew, did you not, at that time, Mr. Margolius, that Holiday Inns of America was not issuing area franchises and would not issue anything other than a single site location? A. My recollection won't go back that far. I am sure, however, that I did know that, because that was a new policy and when it came into effect, I don't know.

Q. Well, didn't you testify several years ago in your [165] depositions that was the fact, that they would not give an area franchise at that time. They would only give a site location? A. That's right, but my recollection is — I don't know when that came into effect. I know that has been the rule now for several years.

Q. As a matter of fact, Mr. Margolius, didn't you testify on page number 456 that a telegram came to your office following this letter of June the 6th with reference to the franchise that was granted? A. That's right, yes.

Q. Are you able to produce that telegram? A. I have looked for it. I'm afraid it's in one of the files, Mr. Galiher, and I have not been able to find it, but a telegram did come.

Q. And that was as an answer to Mr. Savage's letter to Mr. Wilson under date of June 6th, was it not? A. No, I don't think so.

Q. Well, what did the telegram say, if you are unable to produce it? A. "Franchise granted for specific site at Shirley Highway-Glebe Road."

Q. And that was in answer to the letter of June 6th, as far as you know? A. No, I don't think so. And I can tell you why.

[166] Q. Well, was not that telegram sent to Mr. Frank Perper in your care at your office? A. That's right.

Q. Did you ever turn it over to Mr. Perper? A. No. It was — may I explain this? May I explain this?

THE COURT: Very well.

MR. GALIHER: Very well.

THE WITNESS: When I say I don't think it was in answer to that letter, this telegram is a pro former notification that you have been granted a franchise when the executive committee of Holiday Inns of America passes on applications, it is a formal granting of the franchise by notice after an application has been filed. Mr. Julian Savage's letter had indicated that a formal application will be made subsequently, and so I think that subsequently somebody made application for a franchise and this telegram granted it.

MR. GALIHER: May this be marked Defendants' Exhibit No. 1 for identification, if it please the Court?

(Whereupon, a document referred to was marked for identification as Defendants' Exhibit No. 1)

BY MR. GALIHER:

Q. Now, Mr. Margolius, will you take a look at this, please, and this is from Mr. K. Wilson to Mr. Julian Savage [167] under date of June 23rd, 1959 —

MR. FRIEDLANDER: Was that marked at pre-trial?

MR. GALIHER: No, it was not.

MR. FRIEDLANDER: May we see it?

MR. GALIHER: Yes, sir.

THE WITNESS: Yes, I see it.

BY MR. GALIHER:

Q. Now, is it not a fact, Mr. Margolius, that on June 23rd, 1959, as set forth in this letter, Mr. Wilson wrote to Mr. Savage, and you have been shown the letter, as follows:

'Dear Mr. Savage:

In reply to your letter of June 6th, I am sure that by this time you have received a copy of the telegram I sent to Frank Perper, care of Bernard Margolius. I would appreciate your bringing me up to date as to what has transpired since."

You have never seen this letter before? A. I have

never seen this letter before. This is the first time I have seen it.

Q. And the telegram you have told us you are unable to produce? A. I think I will find it someplace. There is a telegram that came to me which said, "franchise granted for this [168] specific location" and I have always told you, that I have said that, and I said it today.

Q. Mr. Margolius, it is the fact that I filed a motion some months ago for the production of this telegram as well as for some other documents. That is a fact, is it not? A. I suppose so. I don't know, Mr. Galiher.

Q. And at that time you said that you had been unable to locate this telegram and that you had looked for it. Have you searched in the last few days for it? A. I haven't. Mr. Deckelbaum may have.

Q. Does he have any idea so far as you know where this telegram is? A. I don't know.

Q. Now, you have told us that you have never seen the franchise or a copy of the franchise prior to some time in 1960, is that right? A. That's right.

MR. GALIHER: May I have this marked as Defendants' two, for identification?

(Whereupon, a letter referred to was marked for identification as Defendants' Exhibit No. 2.)

BY MR. GALIHER:

Q. Is this a copy of the letter which you sent to Mr. Mann, or which Mr. Mann of Holiday Inn sent to you, on September 23rd, 1959? [169] A. I have not seen this before. It is addressed to me, but I have never seen it. Mr. Deckelbaum handled that.

MR. FRIEDLANDER: I have no objection to it being admitted into evidence. We have no objection to it.

BY MR. GALIHER:

Q. You say you don't recall ever seeing the original of this letter which is sent to Mr. Bernard Margolius, Suite 309, 1000 Vermont Avenue, Northwest? A. Yes, that's right.

Q. Was that your address at the time, and also now? A. Yes, right.

THE COURT: Very well.

MR. GALIHER: Very well.

THE WITNESS: When I say I don't think it was in answer to that letter, this telegram is a pro forma notification that you have been granted a franchise when the executive committee of Holiday Inns of America passes on applications, it is a formal granting of the franchise by notice after an application has been filed. Mr. Julian Savage's letter had indicated that a formal application will be made subsequently, and so I think that subsequently somebody made application for a franchise and this telegram granted it.

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BY MR. GALIHER:

Q. Now, Mr. Margolius, will you take a look at this, please, and this is from Mr. K. Wilson to Mr. Julian Savage [167] under date of June 23rd, 1959 —

MR. FRIEDLANDER: Was that marked at pre-trial?

MR. GALIHER: No, it was not.

MR. FRIEDLANDER: May we see it?

MR. GALIHER: Yes, sir.

THE WITNESS: Yes, I see it.

BY MR. GALIHER:

Q. Now, is it not a fact, Mr. Margolius, that on June 23rd, 1959, as set forth in this letter, Mr. Wilson wrote to Mr. Savage, and you have been shown the letter, as follows:

'Dear Mr. Savage:

In reply to your letter of June 6th, I am sure that by this time you have received a copy of the telegram I sent to Frank Perper, care of Bernard Margolius. I would appreciate your bringing me up to date as to what has transpired since."

You have never seen this letter before? A. I have

never seen this letter before. This is the first time I have seen it.

Q. And the telegram you have told us you are unable to produce? A. I think I will find it someplace. There is a telegram that came to me which said, "franchise granted for this [168] specific location" and I have always told you, that I have said that, and I said it today.

Q. Mr. Margolius, it is the fact that I filed a motion some months ago for the production of this telegram as well as for some other documents. That is a fact, is it not? A. I suppose so. I don't know, Mr. Galiher.

Q. And at that time you said that you had been unable to locate this telegram and that you had looked for it. Have you searched in the last few days for it? A. I haven't. Mr. Deckelbaum may have.

Q. Does he have any idea so far as you know where this telegram is? A. I don't know.

Q. Now, you have told us that you have never seen the franchise or a copy of the franchise prior to some time in 1960, is that right? A. That's right.

MR. GALIHER: May I have this marked as Defendants' two, for identification?

(Whereupon, a letter referred to was marked for identification as Defendants' Exhibit No. 2.)

BY MR. GALIHER:

Q. Is this a copy of the letter which you sent to Mr. Mann, or which Mr. Mann of Holiday Inn sent to you, on September 23rd, 1959? [169] A. I have not seen this before. It is addressed to me, but I have never seen it. Mr. Deckelbaum handled that.

MR. FRIEDLANDER: I have no objection to it being admitted into evidence. We have no objection to it.

BY MR. GALIHER:

Q. You say you don't recall ever seeing the original of this letter which is sent to Mr. Bernard Margolius, Suite 309, 1000 Vermont Avenue, Northwest? A. Yes, that's right.

Q. Was that your address at the time, and also now? A. Yes, right.

Q. And do I understand that you are saying the possible reason is that maybe Mr. Deckelbaum happened to be working on that matter at the time and you weren't?
A. That's right.

Q. I assume, then, that is perhaps the reason that you have told us you didn't see the franchise until some time later? A. That may be.

MR. FRIEDLANDER: We have no objection to that letter if counsel wants to offer it because we don't think it bears on what counsel has said.

* * *

[170] THE COURT: Of course, that waiver was the rule before the adoption of the present rule. It will be admitted.

(Whereupon, Defendants' Exhibits 1 and 2 for identification were admitted into evidence)

* * *

BY MR. GALIHER:

Q. Mr. Margolius, it is the fact, is it not, that you have an interest in at least three motels at this time, in which Mr. Perper has no interest? A. Yes, sir.

Q. How many motels do you have an interest in at this time in which he had no interest? A. Three.

Q. Mr. Margolius, there has been introduced by your Counsel into evidence — A. Excuse me. Let me correct my last answer. Mr. Perper does not in his [171] name have any interest in some of those. They are in Harold's name, but I consider that to be one and the same, but apart from the Perper family, I have an interest in these I have mentioned.

* * *

Q. Did you draw any of those documents that have been marked for identification as Exhibits 7, 8, 9 and 10, or was it Mr. Deckelbaum? A. Mr. Deckelbaum.

Q. Did you review those documents before they went out of your office? A. I don't believe so.

Q. You had nothing to do with them, then, or with any of the terms or conditions that went into any of those

agreements? A. No, they are general standard forms and Mr. Deckelbaum was the one who drafted them.

Q. Well, there is nothing standard about the many changes that were made on Number seven, is there? A. There is nothing standard about it, but it is - [172] most of the changes are in the names.

Q. Well, taking number seven, for example, didn't number seven say in the preamble that the franchise was to be in the name of Mr. Frank Perper? A. That's right, yes. You are talking about number -

Q. Seven? A. Seven, yes.

Q. Yes, sir, and then number eight crosses out Mr. Frank Perper's name and puts in Mr. Harold Perper's name, doesn't it? A. That's right. There is a reason for that.

Q. And number nine I assume was a further draft and finally this was finally number 10 which is signed? A. That's right.

Q. Which you signed? A. Yes, that's right.

Q. And you say you didn't see any of these. Did you examine this before you sent it out? Before you signed it? A. I am sure that I read it - well, I may have read it. I don't know, frankly. It was drafted in my office and if I can't sign what my office drafts, then I don't guess I'd sign anything, so I signed it. What I read of it, frankly, I don't know.

Q. Is it not a fact that each of these drafts provides that this agreement represents the entire understanding [173] between the parties hereto and shall be binding upon the parties hereto, their heirs, executors, administrators and assigns, and I think that would be in the last paragraph, would it not? A. I think so, yes.

Q. Number 19 on the final draft. Would you say that that is in all drafts? A. Yes. That is a standard clause, yes.

Q. And number 20 provides that this joint venture agreement shall be constructed in accordance with the

"Uniform Partnership Act of the State of Virginia." A. Construed.

Q. Then the final draft apparently is in error, because it says constructed? A. Yes, but it should be construed.

Q. "Provided, however, that if any of the provisions of this contract are in conflict with the said Uniform Partnership Act, this agreement shall be controlling", if I read that accurately —? A. If you read it?

Q. Have I read it correctly? A. I agreed that is what it says.

Q. The first draft provided, in addition to having the number of changes, for the interests of not only the persons in this room, the plaintiffs and yourself, but also provided for [174] the interests of Mr. Perper, and Mr. Sahm, before it was changed, is that right? A. Well, I think it speaks for itself and it says that, yes.

Q. And, as first drawn it had Frank M. Perper five per cent, and then it says, or rather it shows that Mr. Perper's name is scratched out and his son Harold's name was put in, is that right? A. Yes, sir.

Q. And it says that Mr. Alan Sahm had five per cent interest, that Mr. Savage had five per cent interest and you first had a ten per cent interest, is that right? A. Yes.

Q. But your interest was later reduced to eight per cent and Mr. Deckelbaum obtained two per cent of the ten per cent, if I have read that accurately? A. Right.

Q. And then on the final draft the interests of the plaintiffs, Mr. Broidie, for example, was five per cent, and Mr. Finklestein, another plaintiff, seven per cent, and Mr. Stolar, another one of the plaintiffs had five per cent, and Mr. Weiss had ten and one-half percent, is that correct? A. That is the way it reads, yes, sir.

Q. And your interest amounted to eight per cent and that of Mr. Deckelbaum was two per cent and Mr. Savage had [175] five per cent, Mr. Sahm five per cent and Mr. Harold Perper five per cent, is that correct? A. That is the way it reads.

Q. And Mr. Frank Perper then, was not a signatory to the joint venture agreement as finally drafted and concluded, is that correct? A. That's right.

Q. The other persons who have signed this agreement, were investors, were they not? A. Correct.

Q. And their interests likewise appear as set forth? A. Correct.

MR. FRIEDLANDER: I think Mr. Galiher you read the Stolar interest incorrectly.

MR. GALIHER: I beg your pardon, if I am mistaken. I will certainly correct it. Thank you, Mr. Friedlander. Mr. Morris D. Stolar, two and one-half per cent, is that correct?

* * *

[179] THE WITNESS: May I say, Mr. Galiher, I have this telegram which you talked about yesterday.

* * *

BY MR. GALIHER:

Q. Mr. Margolius, where did you find this telegram? A. Mr. Deckelbaum located it last night and gave it to me this morning.

Q. How many times before last night have either you or your counsel been asked to locate and produce this telegram? [180] A. I don't know how many times you may have asked Mr. Hilland. I don't know.

Q. It is a fact, is it not, as I asked you yesterday, that a motion had been filed in this court asking you to produce this telegram, which was brought to the attention of Judge Matthews and disposed of by Judge Matthews? A. I don't know anything about that.

Q. You don't know that a motion was filed in this court? A. I have counsel who is taking care of motions. I am not familiar with motions in this case.

Q. Mr. Margolius, is it not a fact that after that motion was granted by Judge Matthews, that your counsel came to your office or you came to his office and turned over a number of pieces of correspondence and other documents, which he, in turn, gave to me? A. I gave

my counsel all the documents that he wanted. Whether it was in response to a motion, I don't know.

Q. Did you at that time make a search for the telegram? A. Yes.

Q. Where did you search? A. I searched in the Arlington files.

Q. The same files that you looked in last night? [181] A. Mr. Deckelbaum did not find them in the Arlington files -- did not find the telegram in the Arlington files.

Q. Well, where was this telegram found? A. Well, Mr. Deckelbaum found it. It was delivered to me to bring to court.

Q. Well, didn't he tell you where he found it? A. Yes.

Q. And what did he tell you? A. He found it in a franchise file on Richmond, where it had been misplaced.

Q. It is a fact also, is it not, Mr. Margolius, that again at the pretrial of this case a demand was made upon you to produce that telegram and again it was your position that it could not be located, is that not a fact?

A. I wasn't at pretrial. If my counsel said it couldn't be located, that is what he said.

Q. Mr. Margolius, didn't you read the pretrial statement filed by your counsel in this case? A. I have yet to read it, Mr. Galiher.

Q. Did you rely upon Mr. Deckelbaum for that? A. I relied upon Mr. Hilland.

* * *

[182] MR. GALIHER: Your Honor, may I introduce it into evidence under the same conditions as with respect to my others?

THE COURT: Yes.

MR. HILLAND: No objection.

THE COURT: Let it be admitted.

THE DEPUTY CLERK: Defendant Exhibit No. 3 marked in evidence.

* * *

MR. GALIHER: Your Honor, may I at this time call your attention to an order signed by Judge Matthews on January [183] 2nd, 1965, which, among other things, requires as follows:

"Ordered that the Defendant Margolius locate the telegram referred to in the motion as Paragraph 1."

THE COURT: Yes, I will be glad to look at it.

MR. GALIHER: The bottom of the first page, Your Honor.

THE COURT: Which item are you referring to? That is on the second page?

MR. GALIHER: Yes, sir, it goes over onto the second page.

THE COURT: Very well. Mr. Galiher, I want to be sure that I understand your contention correctly.

This telegram is dated June 14th, 1959. I presume it isn't necessarily an answer to the letter of January 6th, 1959, or do you contend that it is?

MR. GALIHER: Your Honor, it's a chain in the chronology.

May I have the letter of June 6, please, as well as --

THE COURT: That is Plaintiffs' Exhibit 4.

MR. GALIHER: Yes. It doesn't say that it is, Your Honor, but if you look at the subsequent --

[184] THE COURT: The substance seems to be responsive, but it is about five months late.

MR. GALIHER: Might I have the telegram again, Your Honor, if you please?

The letter is June 6, 1959; then the telegram is June 14, 1959.

THE COURT: The letter is dated January --

MR. GALIHER: June. Just eight days before.

THE COURT: Let me see that again.

Oh, I made a mistake in my notes. I put down January. It is June 6th.

MR. FRIEDLANDER: There was a letter of January if Your Honor please. Counsel had submitted it. Your Honor made no mistake.

MR. GALIHER: Your Honor, you will see the telegram is June 14, and another letter June 23rd, all in the same month.

THE COURT: Oh, yes.

* * *

[185] BY MR. GALIHER:

Q. Mr. Margolius, isn't it a fact that the pretrial order entered in April of 1965 in this case provided: "Deckelbaum to keep on looking for telegram mentioned in Perper's request for stipulation No. 1."

And the request for stipulation No. 1 was that this telegram be produced? A. I don't know what is in the pretrial order, Mr. Galiher.

Q. You have never read the pretrial order either?

A. I told you I had not read the pretrial statement or the order.

* * *

[189] Q. You testified, did you not, Mr. Margolius, that a telegram had come from Mr. Walton which said franchise granted for this location? A. That was my recollection of it, yes, sir.

Q. You also testified that it was not for the city and it was for this location only, at Shirley Highway and Glebe Road, did you not? A. I said specific location.

Q. And you said also that at this time, in 1959, you knew it was not the practice of Holiday Inns of America to [190] grant anything other than a franchise for a particular site, did you not? A. No, I said I did not know when that rule came into play. I know there is such a rule and I knew a rule came into play. When it came into play I don't know.

Q. But it had been into play, as you refer to it, for some time prior to this, had it not? A. I can't say that because the franchise that we got right before this one covered an entire county.

Q. And when was that? A. That was in '58.

Q. Well, didn't you say unequivocally in your deposition a franchise is only for a site, Holiday Inns will no longer franchise an area, on page 457? A. Yes, I answered that yesterday. I said I said that, but I don't know when that rule came into effect.

Q. Now, then, that telegram was brought to the attention of the members of the joint venture, was it not?

A. I don't know whether it was or not.

Q. Did you not feel that you had an obligation to show that to the people who were involved in the joint venture at Shirley Highway and Glebe Road? A. Yes, I felt that they should know what's going on.

[191] Q. Well, are you telling me that you relied upon Mr. Deckelbaum to do that, or that it was not done? A. I didn't say I relied on Mr. Deckelbaum for that at all. I said I don't know whether I called it to their attention specifically or not.

Q. You knew, did you not, that the franchise which had been granted was solely for Shirley Highway and Glebe Road?

MR. FRIEDLANDER: I would like to object. The telegram doesn't say that.

THE COURT: Objection overruled.

THE WITNESS: The telegram does not grant a franchise, as I now read it. I was in error in the specific words of the telegram.

The telegram says upon formal application and the payment of a fee a franchise would be granted for a specified location.

MR. GALIHER: May I look at the copy of Mr. Margolius' letter of September 23rd, 1959 which was introduced yesterday?

THE COURT: If you can give the Clerk the exhibit number.

MR. GALIHER: Your Honor, I am afraid I don't have it, but it's September 23rd, 1959, a copy of a letter from [192] Mr. Mann to Mr. Margolius.

BY MR. GALIHER:

Q. Now, Mr. Margolius, there was introduced into evidence yesterday a copy of a letter sent to you by Mr. Mann under date of September 23rd, 1959, and did you not testify that you didn't recall that letter? A. Yes. I now know that I must have seen that letter.

Q. Well, are you able --

THE COURT: What is the exhibit number?

MR. GALIHER: Defendants' Exhibit No. 2, Your Honor.

BY MR. GALIHER:

Q. Are you able now to produce the original of that letter? A. Yes, sir.

Q. May I have it, if you please?

MR. HILLAND: I have it right here, Mr. Galiher.

MR. GALIHER: May that be withdrawn and given this number? Here is the original, Your Honor.

THE COURT: Yes, indeed.

BY MR. GALIHER:

Q. Now, Mr. Margolius, have you produced this morning your file, all files pertaining to Shirley Highway and Glebe Road? A. All files are at the table over here.

Q. And do they constitute all files on the Shirley [193] Highway-Glebe Road joint venture? A. As far as I know, yes, sir.

Q. Will you please produce for me at this time any correspondence between June 6, 1959 that went back and forth between you and Holiday Inns of America or any members of the joint venture, any telegrams and any memorandums between June 6 and September 23rd, 1959? A. I produced the files, Mr. Galiher. I didn't index them.

Q. Well, are you not familiar with them? A. No, I am not totally familiar with those files. I have some information about this letter.

Q. Well, is your counsel familiar with these files? A. Mr. Deckelbaum may be.

MR. GALIHER: Well, may I ask the question of Mr. Deckelbaum?

THE COURT: Surely.

MR. GALIHER: Mr. Deckelbaum, are you in a position to produce from your files all correspondence, letters, memorandums, telegrams, between June 6, 1959 and September 23rd, 1959 that passed between any representatives of Holiday Inns of America and your office, or between your office and Holiday Inns of America, or between your office and any of the [194] persons who were connected with the joint venture?

MR. DECKELBAUM: I can produce them. Your Honor, but it will take approximately four or five hours to go through the voluminous files to see which ones fit the category of production that Mr. Galiher has made at this time.

THE COURT: Well, I am not going to recess the trial. Suppose you have them produced by tomorrow morning.

MR. GALIHER: Might I make a suggestion?

THE COURT: Yes.

MR. GALIHER: If they will turn them over to me, Your Honor, I will take the time necessary to look through the files myself.

THE COURT: Well, if that is agreeable to Mr. Deckelbaum.

MR. DECKELBAUM: I would just as soon not release the files from our possession, Your Honor. I will produce what he has requested.

THE COURT: But have that ready by tomorrow morning.

* * *

[196] BY MR. GALIHER:

Q. Mr. Margolius, in the month of April you have told us about a meeting taking place in your office, attended by the four gentlemen who are plaintiffs in this case, Mr. Deckelbaum, Mr. Savage, am I correct as to that, a few days after the meeting in Richmond? A. About a week later.

Q. Was Mr. Harold Perper there? [197] A. No.

Q. What about Mrs. Perper, now Mrs. Sahm? A. No.

Q. Was there a subsequent meeting at the office of Mr. Weiss? A. There were a number of meetings.

Q. A number of meetings extending over how long? A. I would say extending throughout the life of the construction of the job.

Q. And how frequently would you say there were meetings to discuss the joint venture? A. What do you mean, discuss the business of the --

Q. To discuss anything that might be germane to the operation of the joint venture. A. Well, these meetings were for purposes of discussing the problems with respect to Shirley Highway. How frequent they are, I can't tell you. I did not attend all the meetings, I attended some of them.

Q. Well, would you keep your clients, as general counsel, informed as to all developments on your end?

A. Well, if there were any problems arising on my end, I am sure they would be informed.

Q. Well, isn't it a fact that you discussed with them [198] the telegram received from Mr. Walton, the first telegram that has been introduced, and the fact that the only franchise that had been granted was for a particular site?

* * *

THE WITNESS: I don't remember specifically discussing it with them yes or no.

BY MR. GALIHER:

Q. Well, was there anything about the operation on your end that you didn't take up with your clients and co-joint venturers? A. No, there wasn't -- the obtaining of the franchise [199] for Shirley-Glebe Road was a fact. Whether or not it was received by license agreement or by telegram, we knew we had the franchise at Shirley-Glebe. Whether it was contained in a piece of paper or a license agreement, we knew we had it.

Q. And you knew it was just for a site, did you not?

A. We knew the franchise was for the specified site, yes, sir.

Q. Now, did any of the plaintiffs in this case say to you during the summer of 1959, on the occasion of any of the meetings they had with you, that the site franchise was not what had been promised them when they went to Memphis in the month of April or May of 1959? A. No, no.

Q. And all of these gentlemen, all four of these plaintiffs knew that the only franchise that had been

granted was for this particular site at Shirley Highway and Glebe Road, did they not? A. I would believe, if you are asking me whether or not I knew what they knew, I would believe they knew they had a license agreement for Shirley-Glebe; but they were also under the impression they had a protection for the area.

Q. Did you ever tell them that they had a protection [200] for the area in the summer months of 1959, after getting this telegram from Mr. Walton? A. No, I never told them anything.

Q. Why didn't you turn that telegram over to Mr. Perper if it was addressed to him? A. Mr. Galihir, my files in my office are filled with communications addressed to Mr. Perper.

The contents of the telegram were something that Mr. Perper knew about.

Q. And so did everybody else, did they not, connected with the joint venture? A. I don't think there was any secret. I don't think there was any secret. As a matter of fact, yesterday, I thought the telegram was more specific than it actually is. I thought it said franchise granted for a specific location.

Q. In addition to the Holiday Inn franchises which have been mentioned here in court during the last two days, there was one granted in Alexandria, Virginia, to a gentleman by the name of Krisch, was there not? A. That is right.

Q. Do you have any idea when that was constructed, when that was granted? [201] A. The only thing -- the first I knew about the franchise to Krisch in Alexandria -- at least my recollection of the first I knew about it was when I received some kind of communication from Mr. Perper telling me that he was going to stop that franchise, that he was going to get Kemmons Wilson and Jack Ladd in Holiday Inns to stop that franchise. He wrote me that. I have it in writing.

Q. I don't think I asked you that. I think I asked you whether or not you were familiar with the fact that a Holiday Inn had been constructed by a gentleman named Mr.

Krisch in Alexandria, Virginia. A. Yes, yes. Yes, I am familiar with that.

Q. And do you or any of the four plaintiffs have any interest in that Holiday Inn? A. No, sir.

Q. Does Mr. Perper or any of the folks on this side of the counsel table, so far as you know, have any interest in that Holiday Inn? A. I wouldn't know, but I guess not.

Q. It is a fact, is it not, Mr. Margolius, that during the course of these meetings in connection with the Shirley Highway-Glebe Road venture there was a lot of argument, there was a lot of acrimony, and you described them, for example, in [202] your deposition, like a fishwife's meeting, is that correct? A. Yes; terrible amount of --

Q. And over how long a period of time did that acrimony and did that unpleasantness exist? A. I don't know that it ever stopped, although we have had no meetings of Shirley Highway since -- for a long, long time. But there were very, very few meetings.

The only meeting that I recall where there was no feeling, hard feelings, was a meeting that we had one morning when we agreed to lease the place out.

Q. In other words, things reached a stage that instead of operating Shirley Highway and Glebe Road it was decided that it would be leased out to a gentleman who turned out to be Mr. Shapiro? A. No, that is not true. Mr. Perper wanted to lease this place before it was ever finished.

We did not want to lease it. I objected to leasing it. But at the end, as I say, when we had a final meeting on leasing it, I wasn't going to quarrel with anyone, I agreed to go along with them.

But Mr. Perper wanted to lease it back in 1959, before it was ever completed.

Q. Everyone in the joint venture knew that the [203] franchise as first issued was in the name of Mr. Frank Perper, did they not? A. I can't answer that for sure.

Q. Well, isn't it a fact that your office prepared a

draft of the joint venture which was to be sent to all members of the group, which referred to the fact that Mr. Frank Perper had secured a franchise? A. Yes, the draft said that. What's going through my mind, Mr. Galiher, is, as I recall, sometime or another Mr. Dec-kelbaum told me he had a letter from Jeff Mann saying the franchise was in the name of Harold Perper, if I am not mistaken about that.

Q. Would you produce that letter tomorrow, please?

A. I think I can produce it right now.

MR. FRIEDLANDER: I think I have it.

BY MR. GALIHER:

Q. I would also like to ask you to produce either now or tomorrow, if you please, any and all correspondence, memoranda, telegrams, passing between you and Holiday Inns of America, and any and all members of the joint venture group, not only up to September of 1959, but also through the month of June 1960.

Would you be willing to produce that? [204] A. Yes, I think we can find -- ask Mr. Hilland. If it's all right with him it's all right with me.

MR. FRIEDLANDER: Could we do one thing at a time, if the Court please? Counsel asked me for a letter, and now we have gotten some other things mixed up.

Is this the letter you want?

We will get along better if we just take up one thing at a time.

MR. GALIHER: You told me you were hunting for the letter, and in the interest of time I thought we would go on.

Well, I don't know if this is the letter. I will show it to Mr. Margolius and ask him if it is.

Would you mark it?

THE DEPUTY CLERK: Defendant's Exhibit No. 6 marked for identification.

(Letter dated Sept. 14, 1959 from Holiday Inns to Margolius marked Defendants' Exhibit No. 6 for identification.)

THE WITNESS: This is the letter. That is the letter I had reference to.

MR. GALIHER: May I introduce this into evidence as Defendants' Exhibit No. 6, Your Honor?

THE COURT: Let it be admitted.

[205] THE DEPUTY CLERK: Defendant Exhibit No. 6 marked in evidence.

(Defendants' Exhibit No. 6 for identification received in evidence.)

MR. GALIHER: Would you mark that the next number?

THE DEPUTY CLERK: Defendant Exhibit No. 7 marked for identification.

(Memorandum dated 11-6-59 from Deckelbaum to Harold Perper marked Defendants' Exhibit No. 7 for identification.)

MR. GALIHER: Your Honor, I have handed my next exhibit to counsel after having it marked.

MR. FRIEDLANDER: May I inquire of counsel if it has a last page? The last page is apparently missing, no place for signatures.

MR. GALIHER: Not that I know of. This was another one of the preliminary drafts which came to one of my clients, which I would like Your Honor to see.

Your Honor, I would like to introduce as Defendants' Exhibit No. 7 another draft of the proposed joint venture agreement which was sent by Mr. Deckelbaum, under Mr. Margolius' imprimature, to Mr. Harold Perper, one of the defendants in this case, under date of November 6, 1959.

* * *

[206] THE DEPUTY CLERK: Defendant Exhibit No. 7 marked in evidence.

(Defendants' Exhibit No. 7 for identification was received in evidence.)

BY MR. GALIHER:

Q. Now, Mr. Margolius, will you or your counsel produce tomorrow morning, in addition to the telegrams, memoranda, letters, between you and Holiday Inns of

America or between Holiday Inns of America and your office, and between you and the joint venturers, any and all documents called for in that description from September through the month of June 1960? A. As I gather you wanted from June '59 through June of '60?

Q. Yes, sir, I do. What is your answer to that, sir?

A. My answer is I will have to make an effort to produce it, to get it together.

Q. Now, Mr. Margolius, you told us yesterday that you had an interest in three motels at this time? [207]

A. You asked me -- I have an interest in more than three.

Q. I am talking about in which Mr. Perper does not have an interest. And of course I am excluding Shirley Highway and Glebe Road. A. Yes, I think that is right.

Q. Where are they located? A. Hampton, Virginia, Emporia, Virginia, and Elyria, Ohio.

Q. What about Durham No. 2? A. Oh, excuse me. Yes, Durham.

Q. What about Newbern, North Carolina? A. Yes, I have an interest in that.

Q. What about Portsmouth, Virginia? A. What about it? I don't know anything about Portsmouth.

Q. Do you have an interest in a motel in Portsmouth, Virginia? A. That happens to be owned by Holiday Inns of America.

Q. Then you do not have an interest? A. That is right.

Q. Now, on the inn at Durham, No. 2 -- A. I have an interest in Durham No. 1 too.

[208] Q. Yes, sir, you explained that yesterday.

I am now talking about Durham No. 2. Did you ever invite Mr. Perper to go into a joint venture with respect to Durham No. 2? A. Oh, no. Durham No. 2 was built a couple of years ago. We had bought his interest out of Durham.

Q. Now, you told us yesterday that you bought his interest out after or as a result of a stockholders' meeting, is that correct? A. Partnership meeting.

THE WITNESS: This is the letter. That is the letter I had reference to.

MR. GALIHER: May I introduce this into evidence as Defendants' Exhibit No. 6, Your Honor?

THE COURT: Let it be admitted.

[205] THE DEPUTY CLERK: Defendant Exhibit No. 6 marked in evidence.

(Defendants' Exhibit No. 6 for identification received in evidence.)

MR. GALIHER: Would you mark that the next number?

THE DEPUTY CLERK: Defendant Exhibit No. 7 marked for identification.

(Memorandum dated 11-6-59 from Deckelbaum to Harold Perper marked Defendants' Exhibit No. 7 for identification.)

MR. GALIHER: Your Honor, I have handed my next exhibit to counsel after having it marked.

MR. FRIEDLANDER: May I inquire of counsel if it has a last page? The last page is apparently missing, no place for signatures.

MR. GALIHER: Not that I know of. This was another one of the preliminary drafts which came to one of my clients, which I would like Your Honor to see.

Your Honor, I would like to introduce as Defendants' Exhibit No. 7 another draft of the proposed joint venture agreement which was sent by Mr. Deckelbaum, under Mr. Margolius' imprimature, to Mr. Harold Perper, one of the defendants in this case, under date of November 6, 1959.

* * *

[206] THE DEPUTY CLERK: Defendant Exhibit No. 7 marked in evidence.

(Defendants' Exhibit No. 7 for identification was received in evidence.)

BY MR. GALIHER:

Q. Now, Mr. Margolius, will you or your counsel produce tomorrow morning, in addition to the telegrams, memoranda, letters, between you and Holiday Inns of

America or between Holiday Inns of America and your office, and between you and the joint venturers, any and all documents called for in that description from September through the month of June 1960? A. As I gather you wanted from June '59 through June of '60?

Q. Yes, sir, I do. What is your answer to that, sir?

A. My answer is I will have to make an effort to produce it, to get it together.

Q. Now, Mr. Margolius, you told us yesterday that you had an interest in three motels at this time? [207]

A. You asked me -- I have an interest in more than three.

Q. I am talking about in which Mr. Perper does not have an interest. And of course I am excluding Shirley Highway and Glebe Road. A. Yes, I think that is right.

Q. Where are they located? A. Hampton, Virginia, Emporia, Virginia, and Elyria, Ohio.

Q. What about Durham No. 2? A. Oh, excuse me. Yes, Durham.

Q. What about Newbern, North Carolina? A. Yes, I have an interest in that.

Q. What about Portsmouth, Virginia? A. What about it? I don't know anything about Portsmouth.

Q. Do you have an interest in a motel in Portsmouth, Virginia? A. That happens to be owned by Holiday Inns of America.

Q. Then you do not have an interest? A. That is right.

Q. Now, on the inn at Durham, No. 2 -- A. I have an interest in Durham No. 1 too.

[208] Q. Yes, sir, you explained that yesterday.

I am now talking about Durham No. 2. Did you ever invite Mr. Perper to go into a joint venture with respect to Durham No. 2? A. Oh, no. Durham No. 2 was built a couple of years ago. We had bought his interest out of Durham.

Q. Now, you told us yesterday that you bought his interest out after or as a result of a stockholders' meeting, is that correct? A. Partnership meeting.

Q. Now, isn't it a fact that in addition to Mr. Perper there were other stockholders who withdrew from Durham No. 1 either at that stockholders' meeting or subsequent thereto? A. A couple of them sold their interest out, yes.

Q. And isn't it a fact that they were dissatisfied because the construction had taken a whole lot more than had been expected and there was some doubt as to whether any profit could be realized out of the operation?

MR. FRIEDLANDER: We object to this. It is certainly way beyond the scope of any examination.

THE COURT: I think this is permissible cross-examination.

I might say to all counsel what is in the Court's [209] mind. This suit is on an oral contract. If it was on a written contract, much of that would be irrelevant. But the surrounding circumstances I think might throw a light on the existence vel non of a definite oral contract.

MR. FRIEDLANDER: Our objection was directed to the inquiry as to financing.

THE COURT: I understand that. I am going to overrule the objection for the reason that I have just stated.

THE WITNESS: The answer to your question is, as far as I know, no.

THE COURT: Of course, I might say I presume there are several possibilities here, the way the matter is developing, and that is why I am allowing a great deal of leeway in cross-examination, much more than I would allow under ordinary circumstances.

Of course, there may not have been any oral contract at all. There may have been a definite oral contract such as is claimed. On the other hand, there may have been something in between, an inchoate understanding which didn't create any vested rights.

In other words, all these circumstances might throw a light on the various possibilities.

[210] BY MR. GALIHER:

Q. Did you invite Mr. Perper to participate with you in the motel which you have had constructed and franchised by Holiday Inns in Elyria, Ohio? A. No.

Q. Did you invite Mr. Perper -- By the way, when was that built? A. It opened in the spring of '64.

Q. Did you invite Mr. Perper to participate with you in the construction or operation of the motel which you own at Emporia, Virginia? A. No.

Q. When did that open? A. The spring of '62.

Q. Did you invite Mr. Perper to participate in the construction or operation of the Holiday Inn Motel which you own at Hampton Roads, Virginia? A. No.

Q. When was that built? A. Opened the spring of '62.

Q. Do you recall if the zoning had been secured by the gentlemen who are the four plaintiffs prior to your talking with them about the site? [211] A. No; the site was subject to zoning.

Q. Did you participate in the zoning? A. No, I did not. The zoning was obtained by a lawyer over in Virginia.

Q. Do you remember meeting Mr. Perper on a plane going to Memphis, Tennessee? A. Yes, sir.

Q. Did you have a discussion -- when was that, Mr. Margolius? A. I would say it was September 1963, '62 or '63.

Q. Did he ask you at that time to take action against Mr. Norman Shapiro at Shirley Highway and Glebe Road because of an argument over his use of certain linens? A. At that time?

Q. Yes, sir. A. At that time -- well, that goes into a long story.

Q. Well, if you didn't, I won't ask you anything further. A. We discussed the situation out at Arlington, Virginia, with respect to the linens. I don't recall him at that time telling me to take any action. He characterized the statement that I repeated to him as to what Norman Shapiro had said as a lie, but he didn't talk about

taking any action [212] at that time. He had insisted before that I do something, but that was prior to that airplane meeting.

Q. Isn't it a fact that Harold Perper was in your office on the occasion of the Saturday morning following the Richmond meeting and discussed the Shirley Highway-Glebe Road deal with you? A. Harold Perper?

Q. Harold Perper. A. Harold Perper has never been to a meeting of any kind with respect to the Shirley-Glebe Motel.

Q. What about the day before, Friday morning, did he come to your office? A. No --

Q. And tell you he was on his way to an opening baseball game up in Philadelphia, discussed the Shirley Highway-Glebe Road venture with you at that time? A. Harold to discuss the Shirley-Glebe?

Q. Yes, sir. A. No, I have no recollection of that.

Q. Didn't he go out and examine the site, to your knowledge? A. I don't know what he did. You are asking me if he came into my office. I have no recollection of that.

* * *

[213] REDIRECT EXAMINATION

BY MR. FRIEDLANDER:

Q. Mr. Margolius, as I understand the situation, after 1959 you no longer, or after 1960 or some period, you no longer invited Mr. Perper to join with you in any of your motels, is that correct?

* * *

[214] THE WITNESS: Yes. I can't fix the date. In the summer of 1959 -- this is after I brought the Shirley Glebe deal into the picture -- it came to my attention that Mr. Perper was building a motel in Winchester, Virginia, and I heard that Julian Savage, who is my brother, was in this deal with him; and this came to me in a round-about way. So I called my brother on the telephone and --

* * *

THE WITNESS: All right. After '59, '60, yes sir.

BY MR. FRIEDLANDER:

Q. Now, what was the reason why you no longer invited him to join?

* * *

THE COURT: I think you opened the door, Mr. Galiher.

THE WITNESS: After the Glebe Road matter and after this [215] Winchester matter in which I found out he was building Winchester, I called Mr. Perper on the telephone and I said am I in the deal with you? Because I knew he had taken Julian into the deal. And he told me he had ten per cent open but he hadn't decided what he was going to do with it.

After that there was constant bickering on his part over Durham, which ultimately led to this meeting that Mr. Galiher asked me about, in my office, at which time he was bought out of Durham.

From that time on Mr. Perper proceeded without acknowledging me in any way whatsoever. Frequently, more frequently than not, he refused to talk to me. We would go to meetings and he wouldn't --

THE COURT: No; the question is what was the reason for you not inviting Mr. Perper.

THE WITNESS: Well, this is the reason. The reason is that he had severed his relationship with me in that manner.

BY MR. FRIEDLANDER:

Q. Now, was there a distinction between the Washington metropolitan area and, for instance, Winchester, Virginia? In other words, was he required by any arrangements that you had had, to invite you into Winchester?

MR. GALIHER: I object to that as being irrelevant.

* * *

[216] THE WITNESS: Our arrangement previously had been that anything that was built, I would get part of.

I considered, however, Winchester to be a different picture than the Washington situation.

* * *

BY MR. FRIEDLANDER:

Q. Did you receive -- you received Defendants' Exhibit 3. Would you read that to yourself?

(Pause.)

A. Yes, sir.

Q. Now do you recall the date that the franchise or license was actually issued, the first one?

* * *

[217] Q. Now, this telegram, when you received it you did not have the franchise yet, did you? A. Oh, no.

Q. And did you understand or were you told by Mr. Perper or any of his associates that he did not recognize the protection or the right to develop the area by the joint venture? Did he ever tell you that? A. No.

* * *

[219] BY MR. HILLAND:

Q. Mr. Margolius, I hand you what has been marked for identification Plaintiffs' Exhibit No. 14. A. Yes, sir.

Q. Can you identify the signatures on it? A. Yes, sir.

Q. Those are the joint venturers in this group? A. Yes, sir.

Q. Including Mr. Frank Perper? A. Including Frank Perper, Henrietta Perper.

Q. And the plaintiffs? A. Yes.

Q. And you? A. Yes.

[220] MR. HILLAND: If Your Honor please, I offer this in evidence.

THE COURT: Let it be admitted.

THE DEPUTY CLERK: Plaintiffs' Exhibit No. 14 marked in evidence.

(Plaintiffs' Exhibit No. 14 for identification was received in evidence.)

THE COURT: Mr. Hilland, I don't understand just what this is. Is this the final agreement or one of the drafts?

BY MR. HILLAND:

Q. What is that paper, Mr. Margolius? A. That is a document which we prepared when we went to the

banks and borrowed money. That is a promotion group. In it Frank Perper and Mrs. Henrietta Perper guaranteed the interest --

THE COURT: But what is this document?

THE WITNESS: It's a guarantee document, a guarantee to guarantee bank loans, to borrow money and to guarantee payment.

MR. HILLAND: Your Honor, it also shows the prospective percentage interest of the joint venturers, including Frank Perper, one of the defendants in this case, who with his wife, Henrietta Perper, guaranteed the percentage [221] obligations of Harold Perper and Mr. Sahm.

That agreement, Your Honor, shows what the percentage interests were in relation --

THE COURT: I am wondering whether the witness is thinking of some other document.

Show this to the witness again.

I believe you said this is a guarantee to the bank, is it?

THE WITNESS: No, not to the bank; amongst the joint venturers themselves, the promotion group, a guarantee by Mr. Perper and Mrs. Perper that they would pay any obligation of Harold Perper and Alan Sahm, their nominee.

THE COURT: Well, this is the joint venture agreement, isn't it?

THE WITNESS: Insofar as it goes to the borrowing of money at banks.

THE COURT: Was there another joint venture agreement?

THE WITNESS: Between the promotion group?

THE COURT: Yes.

THE WITNESS: No, not between the promotion group.

THE COURT: There were various drafts of a proposed joint venture agreement that have been introduced here.

[222] THE WITNESS: Yes, sir.

THE COURT: I gathered the impression that this was the final draft that was accepted.

Apparently it is not, is it?

MR. HILLAND: No, Your Honor. The joint venture agreement to which Your Honor referred was not only among the promoter group, the promoters of the motel, but was also among the investors.

THE COURT: This does not include --

MR. HILLAND: This one is among the promoters only, Your Honor, and in substance --

THE COURT: I wish you would refresh my recollection on this. Half a dozen drafts of what was called the joint venture agreement have been introduced. Was the final draft as executed ever introduced in evidence?

MR. GALIHER: Yes, sir, it was.

THE COURT: Now which exhibit is it?

MR. GALIHER: No. 10, I think it is, Your Honor.

THE COURT: Now may I have the exhibit that you just offered in evidence?

MR. HILLAND: Yes, Your Honor.

THE COURT: Now what is the purpose of introducing this in evidence in redirect examination?

[223] MR. HILLAND: Your Honor, that shows the respective interests of the promoters of this particular motel at Shirley-Glebe.

THE COURT: I am going to admit it, but I do want to call counsel's attention to the fact that this is not proper redirect examination. That issue should have been introduced as part of the direct examination.

MR. HILLAND: Your Honor, I perhaps should have said that when I offered it. The reason it was not offered before was in the search for that telegram last night Mr. Deckelbaum found this document and that is the reason I didn't have it yesterday.

THE COURT: I see. Now this is a contract between the parties to this law suit, is that it?

MR. HILLAND: Yes, Your Honor, except Harold Per-

per and Mr. Sahm. Those two defendants, and the defendant Martin Perper is not a party to it.

THE WITNESS: Harold Perper is a party to it.

THE COURT: Well, it is really the joint venture agreement between the promoter group, is it?

MR. HILLAND: Yes, Your Honor, it is.

THE COURT: Plaintiffs' Exhibit No. 10 is something really outside of this law suit, isn't it, because that was [224] an agreement between all the interested parties, the promoter group and the investors as well.

MR. HILLAND: Yes, Your Honor.

THE COURT: But Plaintiffs' Exhibit 14 is the joint venture agreement as between the members of the promoter group, is that it?

MR. HILLAND: Yes, sir.

* * *

[227] THE COURT: Yes, that is correct. I am going to first determine whether there was such a binding oral contract as is claimed by the plaintiffs and the two-cross-claiming defendants. If I find there was not, that ends the case. ***

* * *

[228] BY MR. HILLAND:

Q. Mr. Margolius, when you received this telegram dated June 14, 1959 from Kemmons Wilson of Holiday Inns of America, Inc., addressed to Frank Perper, in your care, had the franchise for Shirley-Glebe been granted by Holiday Inns of America? A. No.

* * *

Q. Have you ever seen the application, the written application for that franchise? A. No, sir.

THE COURT: Who made it?

THE WITNESS: Apparently, Mr. Perper. I didn't. I never saw it, Your Honor.

Q. Do you have any personal knowledge of how the location was specified in that written application? A. No, sir.

* * *

[230] THE COURT: Anything further with this witness?

Mr. Margolius, as to all of the Holiday Inns in respect to which you made individual written contracts with Mr. Frank Perper, you performed legal and other services in each instance, did you not, in regard to the project?

THE WITNESS: I performed myriad services, yes, sir.

THE COURT: And in some of them, in addition to performing services, you also contributed capital, is that right?

THE WITNESS: Yes, sir.

THE COURT: Well, now, as to the Holiday Inns in the Washington metropolitan area, other than the Holiday Inn located at Shirley Highway and Glebe Road, did you perform any [231] services?

THE WITNESS: No, I was not involved in them. In other words, I wasn't called upon.

THE COURT: Did you contribute any capital?

THE WITNESS: No, because I am not party to those. I was not invited into those. In other words, I was excluded from them.

THE COURT: Yes. Well, now, you claim that you were entitled to participate in each of those?

THE WITNESS: Yes.

THE COURT: Did you know that those projects were being constructed and undertaken?

THE WITNESS: I knew them as they went on, yes, sir.

THE COURT: Other than in your letter of 1962, did you ever make a demand on Mr. Perper or offer to participate by way of services or contributions to capital as to any of those projects?

THE WITNESS: No, the only demand I made was in that letter and in some personal communications with him. I repeated what I have said in that letter, that I felt I was entitled to participate.

THE COURT: Did you offer to render any services or contribute capital?

[232] THE WITNESS: When I asked to participate, that includes whatever is necessary to be done in the venture. In other words, it may vary from one to another. There is no set pattern. In some of these deals you put money in, in some you go to the bank, in some you don't put any in.

THE COURT: Well, if you were accorded a share in those enterprises at this time you would be in a position of getting a share without having contributed anything to the enterprise, would you not be?

THE WITNESS: No, I would expect whatever was put up by the Perper interests would have to be matched.

THE COURT: Somebody else performed the legal services as to each of those projects, I presume, is that not so?

THE WITNESS: Well, I did not perform all legal services for all these ventures.

THE COURT: You did not?

THE WITNESS: No, sir. For example, if I may say this, we sold Richmond and the question of settlement and so forth, drawing the contract for the sale, I offered my legal services down there, as I was expected to do. Those legal services were turned down and instead Mr. Perper went out and employed outside counsel and paid a substantial fee, [233] whereas my services would have been rendered for nothing.

This is an example of Mr. Perper would not have anything to do with me in that connection.

I was ready, willing and able to perform whatever was necessary.

THE COURT: When did these other projects in the Washington metropolitan area start?

THE WITNESS: The Catholic University I think was opened in the early summer or spring of '62. That was the first one.

THE COURT: When did the construction start?

THE WITNESS: The exact date I don't know.

THE COURT: I mean approximately.

THE WITNESS: Oh, I'd say fall of '61.

THE COURT: Was that the first one?

THE WITNESS: Yes, sir.

* * *

[234]

RECROSS-EXAMINATION

BY MR. GALIHER:

Q. One of Mr. Perper's criticisms of you, was it not, Mr. Margolius, and one of the reasons he turned to other counsel on some occasion, was because you were not available and did not have time or were not willing to do certain of the legal work? Did he not voice those criticisms of you? A. He complained about me in many respects.

Q. Well, isn't that one of the respects that he made complaint about you? A. Well, when I offered to serve, to give my services to Richmond, for example, he turned them down. I have a letter to that effect.

Q. Didn't Mr. Margolius participate in the Richmond venture? A. I am Mr. Margolius.

Q. Pardon me. Mr. Deckelbaum? A. Mr. Deckelbaum paid as an investor originally and then came in for an additional share on the development group.

Q. For doing legal work? A. No, not for doing legal work. We built Richmond.

Q. Didn't he do legal work at Richmond? A. Yes, he did legal work and did many other things, [235] yes. Whatever was called upon us we did.

Q. Now, Mr. Margolius, this law suit was filed against my clients, Mr. Martin Perper and yourself, in November, November 2nd of 1962, was it not? A. That is right.

Q. You did not file either your answer or your cross-claim until over a year later, November 15, 1963? A. That is right.

MR. GALIHER: Thank you, sir.

THE WITNESS: May I explain why, sir?

THE COURT: Yes, you may.

THE WITNESS: I am a member of the bar of this court and I am very sensitive to this and I just didn't feel like I wanted to and it took me a year to make up my mind. That is why I waited a year.

* * *

ROBERT B. WEISS

a Plaintiff, called as a witness, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FRIEDLANDER:

Q. Will you state your full name? [236] A. Robert B. Weiss.

Q. That is W-e-i-s-s? A. Yes.

Q. And what is your residence address? A. 7604 Rosdhu Court, Chevy Chase, Maryland.

Q. And what is your business address? A. 1415 K Street, Northwest, Washington.

Q. And what business are you now engaged in? A. I am a realtor, as well as a real estate builder and developer.

Q. And how long --

THE COURT: You say you are a realtor and a real estate broker?

THE WITNESS: I am a realtor, which is a real estate broker and a member of the National Association of Real Estate Boards.

BY MR. FRIEDLANDER:

Q. You also are a builder? A. Builder and developer.

Q. How long have you been a real estate broker? A. Well, I entered the real estate business as a salesman the end of 1947.

Q. Have you continuously had a salesman or broker's [237] license since that time? A. I have maintained first a salesman's license and then the real estate broker's license.

Q. And have you done much building in the metropolitan area of Washington? A. A substantial amount.

Q. And are you familiar with locations in the District of Columbia and the surrounding counties? A. Locations for what?

Q. For motels, for instance? A. Oh, yes.

Q. Now, did there come a time when, by reason of certain preliminary conversations, you met in Richmond, Virginia, on April 26, 1959? A. Yes, sir.

THE COURT: What date in April?

MR. FRIEDLANDER: April 26.

BY MR. FRIEDLANDER:

Q. That was a Sunday, was it not, Mr. Weiss? A. Yes, sir.

Q. It was the last Sunday in April, is that correct? A. As I recall, it was the last Sunday in April.

Q. Now will you tell the Court who was at this [238] business meeting? And I distinguish between your introductory meeting and the business meeting. A. The four plaintiffs, Mr. Finkelstein, Mr. Stolar, Mr. Broidie, myself, --

THE COURT: Suppose you go slower so we can get it down.

THE WITNESS: Mr. Finkelstein, Mr. Stolar, Mr. Broidie, myself, Mr. Margolius, Mr. Perper.

Mr. Deckelbaum I believe -- I know that he was there visiting. I think he came in and out of the meeting. I don't recall that specifically.

BY MR. FRIEDLANDER:

Q. Your best memory is that Mr. Deckelbaum may not have been there during the entire time? A. As I recall, he was not there the entire time.

Q. Was a Mr. Harold Perper there? A. No, sir, not to my recollection. I don't remember him specifically being there at all.

Q. Now will you tell us what the substance of the agreements there made between your group, consisting of yourself, Mr. Stolar, Mr. Broidie and Mr. Finkelstein, and the other group, consisting of Mr. Perper and Mr. Margolius? A. We had agreed to enter into a partnership [239] arrangement or a joint venture to specifically

develop a site that we had found at Shirley Highway and Glebe Road, and that as a result of this location we would find other locations so that we could develop the Washington area, and specifically for Holiday Inn motels.

Q. What was the arrangement, if any, concerning shares? A. Well, we had agreed that we would divide -- in other words, out of 100 per cent, if I can for the purpose of identification say the Finkelstein or Weiss group would have 50 per cent and the Perper-Margolius group would have 50 per cent; and --

Q. Did you discuss how it would be financed? A. We discussed --

THE COURT: Just a moment. Let me have that division again.

THE WITNESS: A fifty-fifty arrangement between our group, the defendants, and the group --

THE COURT: Who do you mean by "our group"?

THE WITNESS: Once again, Mr. Finkelstein, Mr. Stolar, Mr. Broidie and Mr. Weiss, myself; and the other group being Mr. Margolius and Mr. Frank Perper.

THE COURT: Mr. Margolius and Mr. Frank Perper were to have 50 per cent between them, is that it?

[240] THE WITNESS: Well, we didn't enter into any discussion as to how they would divide their interest.

THE COURT: I say, 50 per cent between them?

THE WITNESS: Yes, that is correct.

THE COURT: Well, 50 per cent of what?

THE WITNESS: 50 per cent -- in other words, whatever the situation would arise. We had discussed at this meeting that investment capital would be necessary and that we discussed specifically that we would need investors in the developing of the Shirley Highway-Glebe site and that also any other additional sites that we would find in metropolitan Washington. We anticipated additional financing would be necessary.

Not knowing how much would be necessary for each and every individual situation, we would not have known at that point how much we would have to pay out to entice capital investment in the various situations that we would find.

So that our 100 per cent would have to be diminished by the investors. So that our arrangement could only be predicated on what would be left, and that would be divided fifty-fifty between our group and the Margolius-Perper group.

[241] THE COURT: What are these percentages percentages of? Are they percentages of net profits or what?

THE WITNESS: Of the real estate involved, which was the motels and the site the motels were built on, as well as the interest in the operations of the motels.

As a matter of fact, at that point we anticipated operating these motels ourself and this was the position that Mr. Frank Perper was to -- that responsibility he was to accept.

THE COURT: You may proceed.

BY MR. FRIEDLANDER:

Q. Now, was there any discussion at that time as to further agreements relating to your enterprise? In other words, was anything else discussed and decided upon?

A. You mean at the Richmond meeting?

Q. Yes. For instance, were there any contingencies?

A. Well, we had a situation specifically where we had been presented the site at Shirley Highway and Glebe Road by a real estate broker that we had previously done a fair amount of business with, and we were concerned that since we had not prior to this discussion I had with Mr. Margolius, we had not entered into any motel arrangement -- that is, our group -- so that we were concerned since we had an option [242] that would become available for us to acquire this site, I wanted to make sure that we would enter into some association with someone that we had confidence in; and that is what brought my meeting with Mr. Margolius originally.

So that in our discussions in Richmond we discussed the fact that a broker had brought us an option on a site where a real estate builder had acquired the land subject to zoning. So that in effect we were being offered the opportunity of buying his contract at a profit to him,

subject to zoning. He had to initiate and acquire the zoning on our behalf.

Q. Well, now, was your agreement made in Richmond, was it subject to your group and the Margolius-Perper group actually acquiring the site and building the motel? A. Yes, this would have been necessary because without this site there would have been no way for anyone to acquire the franchise either for the site or for the entire area, which was brought up at this meeting.

Q. And was it also conditioned, any agreement you made, upon you getting, obtaining a franchise for this particular location? A. Yes; otherwise --

MR. GALIHER: I object to that as leading.

[243] THE COURT: What is the ground of your objection?

MR. GALIHER: Your Honor, the question is leading.

THE COURT: Objection sustained.

BY MR. FRIEDLANDER:

Q. Will you tell us what other contingencies there were, if you can recall? A. Well, in addition to the zoning, it was discussed specifically that the franchise was essential, both from the standpoint of our going ahead on other sites, on the necessity that to acquire the best financing that would be available the franchise became an important element.

* * *

Q. Now, if you will talk slow, please, sir, and tell us, after the Richmond meeting did you return, did you leave Richmond? A. We physically left the City of Richmond and returned to Washington.

Q. And then did you take any steps, in line with your arrangements, a few days after you returned from Richmond? A. Within a few days after our meeting in Richmond we entered or we picked up the option that was available to us.

[244] THE COURT: What do you mean by picked up the option?

THE WITNESS: In other words, we had discussed with the broker that the property was available.

It so happened that we knew the individual who had the land contract. He was a real estate builder. We knew him personally. We had dealt with the real estate broker many times.

So that we knew that in his offering us the opportunity of buying the contract, that the owner had --

THE COURT: I understand. You used the words picked up the option. What do you mean by that?

THE WITNESS: I mean by that that the broker wanted us to sign a contract to acquire the contract that the contract owner had, which we were reluctant to do until after we had met Mr. Perper and Mr. Margolius in Richmond.

THE COURT: What did you do after the Richmond meeting? You said you picked up the option.

THE WITNESS: We met with the real estate broker and signed --

THE COURT: What do the words picked up the option mean?

THE WITNESS: Sign a contract offering to buy --

* * *

BY MR. FRIEDLANDER: [245]

Q. You actually completed your arrangements so that you became the option holder? A. That is correct.

THE COURT: You signed a contract to buy a contract for the purchase of the property?

THE WITNESS: Yes, Your Honor, that is correct.

BY MR. FRIEDLANDER:

Q. Now, did there come a time after that that you had any further meetings in relation to this venture or partnership? Did you have further meetings after you picked up the option? A. We had many, many meetings.

Q. Well, what was the next meeting after the Richmond meeting and after you acquired the option? A. Well, I remember specifically a meeting that we had in Mr. Margolius' office, which I believe was the following Saturday. We had met in Richmond Sunday. For some reason we could not meet during the week and I think the next meeting schedule was on a Saturday.

Q. Who was there at this meeting in Mr. Margolius' office on the following Saturday?

* * *

[246] A. I mean the four plaintiffs, the defendants, Mr. Perper and Mr. Margolius. I believe Mr. Savage was at the meeting.

Q. Did you see -- A. I believe Mr. Deckelbaum. I don't recall specifically.

Q. Was Mr. Harold Perper there? A. No, sir, he was not.

Q. Now, what was the nature of the meeting that you had? What did you discuss? A. Well, since we had signed the option agreement we discussed the fact that we had entered into this agreement. It was necessary to acquire the franchise, and of course we had gotten zoning. The burden of the zoning was on the owner of the contract, but it was a necessity so that we could continue our plans.

I think we reaffirmed our situation with respect to the fact that we wanted to operate the motel.

We discussed the fact that we would assume part of the obligation of finding additional sites. This was an important element to us. Mr. Finkelstein and myself and Mr. Stolar were real estate brokers and were active in the area [247] and we were anxious, in addition to getting the zoning for this site, in getting a franchise, that we would do whatever would be necessary to acquire additional sites.

Q. Now, did there come a time in any subsequent meeting or any meeting in which it was determined that someone would go to Memphis? A. Yes, sir.

Q. Was this trip to Memphis agreed to, authorized by or otherwise known to Mr. Perper?

MR. GALIHER: I object to the question as leading.

THE COURT: Objection overruled.

BY MR. FRIEDLANDER:

Q. Can you tell us? A. I know that I spoke either to Mr. Perper or Mr. Savage, that they were aware of our meeting, our trip to Memphis.

Q. Do you recall when you went to Memphis? A. It was in May, the following month after our Richmond meeting, in 1959.

THE COURT: You mean, you went to Memphis, or someone else?

THE WITNESS: I went to Memphis personally, with Mr. Broidie.

[248] BY MR. FRIEDLANDER:

Q. Mr. Broidie has -- well.

You and Mr. Broidie went to Memphis, and can you fix the time as best as you can? A. I remember specifically it was on a Friday because Mr. Broidie -- we were building at the time --

Q. Friday. What month? A. It was May.

Q. Of what year? A. 1959. As I say, a Friday. I don't recall the specific date. It probably was around the middle or the end of May.

Q. And did you then, when you went to Memphis, did you see someone there connected with the Holiday Inns? A. We had a meeting with Mr. Kemmons Wilson, who is Chairman of the Board of Holiday Inns of America.

Q. Now will you tell the Court what happened at that meeting?

MR. GALIHER: Your Honor, I object to any conversation because it would be obviously hearsay.

* * *

[249] THE COURT: *** I will sustain the objection.
BY MR. FRIEDLANDER:

Q. As a result of your meeting -- tell us, in your presence did Mr. Kemmons Wilson make any telephone call? A. Yes, sir, he did.

Q. Do you know to whom he called?

MR. GALIHER: I object to that since obviously he [250] would not be on the other end of the wire.

THE COURT: You may ask whom he called.

MR. FRIEDLANDER: Yes, that is what I did.

BY MR. FRIEDLANDER:

Q. Who did he call? A. He called Mr. Frank Perper.

Q. Did you hear any part of the conversation between

Mr. Wilson and Mr. Perper? In other words, did you hear Mr. Wilson's part of the conversation? A. I heard Mr. Wilson's discussion. Of course, I did not hear Mr. Perper.

Q. Would you tell us what Mr. Wilson said to Mr. Perper?

MR. GALIHER: I object, Your Honor.

THE COURT: Objection sustained.

* * *

[251] BY MR. FRIEDLANDER:

Q. Now, Mr. Weiss, after you heard a conversation between Mr. Wilson, Kemmons Wilson and the party he called, did Mr. Wilson then talk to you? A. Yes, we spent several hours in the company of Mr. Wilson.

Q. Now, did there come a time when you repeated the conversation that you had with Mr. Kemmons Wilson to any of the defendants? A. Yes, we had discussed this specifically with Mr. Perper and Mr. Savage.

Q. Now will you tell the Court what you said to Savage and Perper as to the conversation of Kemmons Wilson?

* * *

[252] MR. GALIHER: Your Honor, if this question is to be answered, I ask that the time and place be named and who was present.

THE COURT: I am not going to require you to do that, but I think it would be better if you did.

MR. FRIEDLANDER: We will, sir.

BY MR. FRIEDLANDER:

Q. It's been requested that you give us your best memory of the place that your conversation occurred with Savage and Perper. A. To the best of my recollection, it would have occurred within a few days after our return.

Q. And where at? A. In Mr. Savage's office, which I think at that time was on 15th Street.

Q. Did Mr. Perper have an office with Mr. Savage at that time? A. I know that he conducted much of his

business in Mr. Savage's office. Whether he personally had an office there I don't recall.

Q. Was it unusual for you to see Mr. Perper in Mr. Savage's office? [253] A. No.

Q. Now will you tell us about the conversation that you told them you had had with Mr. Wilson? A. We confirmed that we had a meeting with Mr. Kemmons Wilson, that he was satisfied that we were partners with Mr. Perper as a result of his telephone call, and that in addition to the franchise he had brought up the geographical limitation for the franchise because he made it quite clear to us that there might be a time when the Holiday Inn parent company would want to build motels in Washington and that as a result of this they would always have that opportunity. They would give us the protection, other than the parent company, if they decided to come into the area to build a motel for themselves.

Q. So I make sure I understand you, you told them about the conversation with Mr. Wilson, which included the statement by Wilson that the company reserved the right to come into the area? A. That is correct.

MR. GALIHER: Your Honor, I object to Mr. Friedlander's testimony.

THE COURT: Objection sustained. But I am going to have the answer read.

(The reporter read the answer.)

[254] BY MR. FRIEDLANDER:

Q. To your knowledge, has the parent company ever built a motel in the metropolitan area? A. No, sir.

THE COURT: What do you mean would give protection?

THE WITNESS: Mr. Wilson in his discussion with Mr. Broidie and myself brought up the fact -- he wanted us to understand that there was a limitation to our franchise, which was the 20-mile radius. We were unaware of this until he brought this to our attention.

BY MR. FRIEDLANDER:

Q. The Court, I think, wanted to know about what you meant --

THE COURT: I asked you what you meant by the word protection.

THE WITNESS: They would not issue a franchise to anyone else other than ourselves, except for the parent company.

BY MR. FRIEDLANDER:

Q. This conversation that you had with Mr. Julian Savage and Mr. Perper resulted in a letter, did it not?

A. Yes, sir.

Q. And that letter has been offered in evidence as Plaintiffs' Exhibit 4.

I show you Plaintiffs' Exhibit 4 and ask you if [255] this is the letter a copy of which you received? A. Yes, sir, this is the copy.

THE COURT: What are you showing the witness, Mr. Friedlander?

MR. FRIEDLANDER: I am showing the witness Plaintiffs' 4, a letter to Kemmons Wilson from Julian Savage, which confirms the arrangement --

THE COURT: Very well. Let me see Exhibit 4. Thank you.

BY MR. FRIEDLANDER:

Q. Do you know whether or not a franchise was ever issued for the one site?

THE COURT: Well, don't we have all that?

MR. FRIEDLANDER: We have that.

THE COURT: The franchise is in evidence.

MR. FRIEDLANDER: I didn't want to lead the witness, but I want to find out who paid for the franchise.

THE WITNESS: We paid for it.

BY MR. FRIEDLANDER:

Q. How much did it cost? A. \$10,000.

Q. And who paid for it? A. The group paid for it.

Q. And did you know anything about any changes in the [256] terms of the franchise itself? A. No, sir, I did not.

Q. Did you seek sites for other motels? A. Yes, sir.

Q. And how many sites do you think you submitted to anyone in the venture? A. I recall a minimum of three or four and in all probability more.

Q. And who did you submit them to? A. I discussed them with Julian Savage, Frank Perper, Mr. Finkelstein, and I believe Mr. Margolius.

Q. Is it a fact that you discussed each one of those sites with Mr. Perper as well as others? A. Yes, sir.

Q. And what did Mr. Perper do about the sites you submitted to him? Did he accept them or reject them? A. He must have rejected them because we didn't proceed any further on them.

Would you want to go into which sites they were?

Q. I will let Mr. Galiher ask you, if he wants to know.

Would you tell us whether, to your knowledge, Mr. Broidie submitted any sites? A. I don't recall.

[257] Q. How about any of the other members? A. I remember that Mr. Finkelstein worked on a specific site at the request of Mr. Perper. As I recall, this preceded the Shrine. In other words, he wanted something in that area. I think he asked Mr. Finkelstein to see if he could find something in the northeast section of Washington.

Q. Did you and Mr. Finkelstein and the others actively work on acquiring new sites for the joint venture? A. Yes, sir.

Q. And did any of those sites, were any of them accepted by Mr. Perper? A. No, sir.

Q. Did you know -- A. Are you speaking of metropolitan Washington?

Q. Yes, sir. A. Yes, sir.

Q. I am limiting myself to the metropolitan area.

Do you know or when did you learn and how did you learn of the fact that Frank Perper, defendant in this case, was attempting to build a motel at the Shrine or near the Shrine?

THE COURT: Where?

MR. FRIEDLANDER: Near the Catholic Shrine.

THE WITNESS: The real estate business is such, Mr. Friedlander, [258] that as big as an industry it is here in Washngton, when you are active as we have been in the business, you hear through many channels.

I do not pinpoint I became aware of it, but as I recall, it was before the newspapers made any mention of the fact that there would be a Holiday Inn at the Shrine.

BY MR. FRIEDLANDER:

Q. In other words, you had heard rumors and then you did see it in the newspaper? A. As I recall, I did see it in the newspaper, but I remember initially hearing of this prior to any opening of or the beginning of any construction.

Q. Of the Shrine? A. Of the Shrine.

Q. Now, how far advanced was the Glebe Road site at the time that you heard the rumors of the Shrine deal?

A. Well, as I recall, we completed the construction of Shirley-Glebe, sir, in the summer of '60. This would have been after the completion. My best recollection would be either late '60 or early '61.

Q. What did you do when you heard the rumors? Did you attempt to reach Perper or Margolius? A. No, I did not.

Q. Who did you call? [259] A. I discussed it with Mr. Finkelstein.

Q. Well, did you call -- as I understand, did you call in the other group? A. I discussed it subsequently with Mr. Margolius. I did not discuss it with Mr. Perper.

Q. Where was Mr. Perper living at that time, if you know? A. To the best of my recollection, he was living in Miami, Miami Beach, Florida.

Q. And had you seen him quite often or seldom during that period? A. Well, I saw him fairly often prior to the construction of the motel. Once we began construction I saw him less frequently.

Q. Now, would you say that -- would you fix the time that you called Mr. Margolius or talked to Margolius about the Shrine site? A. To the best of my recollection, this would have been in 1961. I don't think I could

pinpoint specifically what month. Possibly the latter part of '60. I am not sure.

* * *

[260] Q. At that point, as I understand it, what group was Mr. Margolius a part of in the joint venture, your group or the other group?

MR. GALIHER: I object to that. I think the joint venture speaks for itself, Your Honor.

MR. FRIEDLANDER: What do you mean speaks for itself? It is an oral agreement.

THE COURT: Well, I will allow this. This is innocuous.

THE WITNESS: Mr. Margolius, in all of our meetings we always looked upon Mr. Margolius and Mr. Frank Perper as partners.

The fact that he physically was here in Washington obviously made it much easier for us to discuss --

THE COURT: In view of Mr. Galiher's objection I am going to strike the answer as not responsive and going beyond the confines of the question.

Suppose you read the question.

* * *

BY MR. FRIEDLANDER:

Q. In negotiating with the Perper group with whom [261] would you speak? A. I would speak with Mr. Frank Perper, with Mr. Margolius, with Mr. Savage, and Mr. Deckelbaum.

* * *

[262] CROSS EXAMINATION

BY MR. GALIHER:

Q. Mr. Weiss, prior to talking to Mr. Perper in Richmond, Virginia, had you ever been in the motel or hotel business in any way? A. No, sir.

Q. Had you been associated with the other gentlemen who are plaintiffs here? A. Yes, sir.

Q. And if so, in what way? A. Yes, sir. We were involved in -- with Mr. Stolar I was a salesman with him with a real estate firm here in Washington. We subse-

quently became partners in the real estate brokerage business. As a result of that activity I had known -- as a matter of fact, I had met Mr. Finkelstein when I was a salesman with the same firm and we became associated in a venture to build houses and we were associated together for a number of years, and prior to the motel that we are discussing, the site acquisition, we were building homes together with Mr. Jacob Broidie.

Q. How many of you were building homes together?

A. Mr. Broidie, Mr. Stolar, Mr. Finkelstein and myself.

Q. And where were you building homes? [263] A. We began construction in McLean, Virginia, and then in Arlington, Virginia.

As a matter of fact, it was as a result of our building homes in Arlington that we became familiar with this site which was near where we were building.

Q. Where were you building homes in April of 1959?

A. In Arlington, Virginia.

Q. Exactly where in Arlington, Virginia? A. It was called Devoncrest, at 23rd Street and Army-Navy Drive, in that area.

Q. Was that a plot of ground that the four of you had purchased? A. Yes, sir.

* * *

[265] Q. Now, then, before meeting Mr. Margolius and before meeting Mr. Perper in connection with this discussion which took place at Richmond, had you four gentlemen entered into any agreement with respect to yourselves concerning the building of any motel or motels in the District of Columbia, Arlington, Virginia, or Maryland? A. Prior to our meeting in Virginia, in Richmond?

Q. Yes, sir. A. I don't think that we had any formal meetings as such. We just decided we found this particular site. We were interested in going forward to build a motel.

Q. And did Mr. Margolius tell you that Mr. Perper had been committed to the area? A. No, sir.

Q. Now, at this meeting in Richmond what interest were you, yourself, to have in the motel, that was to be constructed at Shirley-Glebe if your operations in getting the rezoning and franchise were successful? What interest were you, yourself, to have? A. At what point? Are you discussing at the meeting in Richmond?

Q. Yes, sir. A. It was not discussed among ourselves.

[266] Q. What interest was Mr. Finkelstein supposed to have? A. I say we did not discuss among ourselves what interest we would have between ourselves, other than the fact that we were going to split fifty-fifty whatever interest that there would be left.

Q. So there was no discussion between yourselves, and that includes also Mr. Stolar and Mr. Broidie? A. That is, the Sunday we met in Richmond, yes, sir.

Q. When did you finally decide what interest each of you was to have in Shirley Highway and Glebe Road? A. It was after the meeting, but when I can't say. I don't remember.

Q. Now, you had been equal partners in the building of the homes in Arlington, had you? A. I don't believe so. I think there was a differential between Mr. Finkelstein. I frankly don't recall, but I think there was a differential.

THE COURT: What do you mean by differential?

THE WITNESS: I don't remember. There was a different percentage arrangement. Mr. Stolar and myself and Mr. Broidie I believe had a greater interest than Mr. Finkelstein.

[267] BY MR. GALIHER:

Q. So on the occasion of this first meeting you had no idea as to what interest you would have if Shirley Highway and Glebe Road went forward? A. We did not discuss how we would divide our own interest.

Q. Now, Mr. Weiss, you testified before lunch that after you and -- it was Mr. Broidie who went to Memphis with you? A. Yes, sir.

Q. After you and Mr. Broidie came back from Memphis you reported to Mr. Perper and to Mr. Savage concerning your visit to Memphis, at Mr. Savage's office on 15th Street. Did you so testify that way? A. Yes, sir.

Q. And there is no doubt in your mind about it, is there? A. As to where, or the fact that we had the meeting?

Q. As to who was present at that conversation. A. To the best of my recollection, it was Mr. Perper and Mr. Savage, and I believe Mr. Finkelstein.

Q. Now, your deposition was taken almost three years ago in this matter, was it not? [268] A. Approximately three years ago. I don't recall the date.

Q. And your recollection was a great deal fresher at that time than it is today, was it not? A. I really couldn't answer that because since then we have had many meetings. It may or may not have been. I don't remember.

Q. Were you asked these questions on page 244 of your deposition: A. I have to refer to the deposition.

MR. GALIHER: Your Honor, it's the second question at the top of the page, starting there.

BY MR. GALIHER:

Q. "When you returned to Washington from that trip" -- and that trip refers to your trip to Memphis, as will be seen before -- "did you ever talk to Mr. Savage about it?

"A. I know that I spoke to either Mr. Savage or Mr. Perper, someone in their office, with relation to our conversation with Mr. Kemmons Wilson.

"Q. Did Mr. Savage say that he would or would not do anything about your visit to Mr. [269] Wilson in the way of confirmation?

"A. I believe he was to confirm the result of our meeting in Memphis."

Were you asked those questions and did you answer that way? A. If that is in the deposition, I am sure that is the way I answered it.

Q. Is it not a fact that you were not sure that Mr. Perper was present when you had this meeting and con-

sequently you answered as I have just read to you, that it was either Mr. Savage, Mr. Perper, or perhaps somebody else in their office, in Mr. Savage's office? A. I certainly didn't mean anyone else in their office, no.

Q. Well, is it not a fact that you could not tell us then, in 1962, three years ago, if Mr. Perper was present and answered the question asked of you that way?

A. I know that either one or both of the gentlemen were in the office when we discussed it.

Q. But you said before lunch that it was Mr. Perper and Mr. Savage, didn't you? A. I said it was both.

Q. Now, isn't it a fact that Mr. Perper did not even [270] know that you two gentlemen had been to Memphis until sometime after June? A. That is not correct, no, sir.

Q. When did you ever tell him that you had been to Memphis? A. When I met Mr. Savage and he in the office.

Q. And this is the answer that you gave to that question in 1962? A. If that is what you are reading in the deposition, it is.

Q. And you say that Mr. Perper was present? A. To the best of my recollection, he was.

Q. But you did answer that either Mr. Perper or Mr. Savage, someone in their office was the person you talked to? A. Or I may have neglected to say both. I am saying either one or both.

Q. Didn't you tell us when your deposition was taken that you were not sure and that it was one or the other? A. If you will repeat. I don't recall my saying I am not sure. Do you want to read the deposition back to me?

* * *

[271] THE COURT: No, I don't permit interruptions during the cross-examination.

MR. FRIEDLANDER: I want to object.

THE COURT: You may proceed.

BY MR. GALIHER:

Q. Now, Mr. Weiss, you have testified to numerous

discussions with Mr. Margolius and with other persons connected with the joint venture, have you not? A. Yes.

Q. How frequently would you say that meetings were held to discuss any phase of this joint venture commencing from April 1959 through, let us say, when the building was completed sometime in 1960? A. I'd have no idea how many meetings we had.

Q. Would it be fair to say that you met every several weeks? A. Well, many of our meetings, if you want to refer to meeting, would be telephone calls in discussing various points, whether it was construction or any other part of the business.

Q. You asked Mr. Savage to send the letter of June 6, did you not? A. I remember our discussing the specific meeting. I [272] believe that myself or Mr. Finkelshtein would have suggested that a confirmation be made of the meeting that we had. Possibly Mr. Savage suggested it or Mr. Perper. I don't know.

Q. Mr. Savage had no way of knowing what had taken place in Memphis except for what you or Mr. Broidie told him, is that not a fact? A. Do I know whether he could -- no, he may have made a call. I'd have no way of knowing.

Q. As far as you know, the information contained in that letter was based upon what you and Mr. Broidie, or both of you, had told him after you had been to Memphis? A. Also Mr. Kemmons Wilson. You neglected to say Mr. Wilson.

Q. Do you have any knowledge that Mr. Kemmons Wilson told Mr. Savage anything which was incorporated in his letter? A. Just Mr. Frank Perper.

Q. I am afraid that I don't understand you.

Did Mr. Savage, who wrote the letter of June 6, know anything about what had transpired when you and Mr. Broidie visited Mr. Wilson, apart from what you told him or Mr. Broidie? A. I don't know. He may have talked to Mr. Perper. Mr. Wilson may have talked to Mr. Perper. I don't know.

[273] Q. Well, if he didn't talk to Mr. Perper and if

he didn't talk to Mr. Wilson, then the information could only have come from you, isn't that a fact? A. Or Mr. Finkelstein or Mr. Broidie. That is correct.

Q. Well, Mr. Finkelstein was not in Memphis, was he? A. No, but I met with Mr. Finkelstein before I met with Mr. Savage.

Q. You are suggesting then that maybe Mr. Finkelstein told Mr. Savage? A. No, I am not suggesting anything. I am saying that I am sure I discussed this with Mr. Finkelstein upon my return.

Q. Well, didn't you suggest that maybe Mr. Savage was told by Mr. Finkelstein? A. Possibly Mr. Finkelstein might have mentioned it, or myself. I don't recall specifically. I do know that Mr. Savage was aware of the meeting.

Q. At that time Mr. Savage was the accountant for your firm, was he not? A. I believe so.

Q. And what was the name of your firm at that time? A. Weiss and Stolar.

Q. And what was the business -- [274] A. Incorporated.

Q. What was the business of Weiss and Stolar? A. Real estate brokerage firm.

Q. And that was separate from the construction business over in Arlington? A. Yes, sir.

Q. And how long had Mr. Savage represented you as an accountant? A. For Weiss and Stolar?

Q. Yes, sir. A. I don't recall. I think Mr. Stolar might recall.

Q. Well, he represented you for some years, had he not? A. For some years, yes.

Q. Did you ever make any memorandum concerning the meeting in Richmond, Virginia? A. No, sir.

Q. Or any meeting subsequent, in either Mr. Margolius' office or elsewhere, when anything was discussed pertaining to the arrangement that was purportedly reached in Richmond? A. No, sir.

Q. You knew, did you not, Mr. Weiss, that this telegram which was introduced into evidence, which was pro-

duced [275] by Mr. Deckelbaum this morning, had been received after the letter of June 6 was sent out? This is Defendants' Exhibit No. 3(handing). A. I don't recall whether I was aware of this telegram or not. It was addressed to Mr. Perper and I just don't know whether I saw this telegram or not.

Q. Well, you have heard Mr. Margolius testify that it was received in his office? A. I know, but there would be many things that he would be receiving that I would be unaware of.

Q. I didn't ask you that. You have heard Mr. Margolius testify that that was received at his office, have you not? A. Yes, sir.

Q. And you have testified to attending meetings with the joint venturers at Mr. Margolius' office? A. Yes, sir.

Q. And do you deny that you have ever seen that telegram before today? A. I didn't deny it. I said I don't recall.

Q. When do you recall you first saw it? A. I don't. I said I don't recall seeing this telegram. I may have or I may not. I don't remember seeing this [276] before.

Q. When were you told that a franchise had been granted for Shirley Highway and Glebe Road or that any franchise had been granted? A. I can't be specific. I know in the course of meetings and discussions I knew that obviously, since we had acquired the land and that was a condition of getting the franchise, that we had acquired it.

Once we had made the trip to Memphis, I believe that between our attorney who represented the group, Mr. Margolius, or Mr. Deckelbaum, and between Mr. Perper, that they handled the activity between Holiday Inns and our group.

THE COURT: I don't think you are answering the question, Mr. Weiss.

MR. GALIHER: Would you repeat the question?

THE COURT: Will you read the question?

(The reporter read the last question.)

THE WITNESS: At one or more of the meetings afterward. I don't recall specifically when.

BY MR. GALIHER:

Q. Mr. Weiss, are you saying to us that the reason you do not recall some of these things is because you relied upon Mr. Margolius and Mr. Deckelbaum? Am I understanding you [277] correctly on that? A. That is correct.

Q. Isn't it a fact that Mr. Margolius and Mr. Deckelbaum kept you gentlemen, you and the other three plaintiffs in this case, advised every step of the way as to what was going on in connection with this joint venture?

A. When they advised me of certain things, they advised me. Whether they advised me of everything, I don't know.

Having known Mr. Margolius for a long time, I assume that since he was my partner in the situation and was in fact an attorney, that he would handle all legal communications and work.

Q. Well, at the various meetings that you have indicated were held, was not a discussion held with respect to all phases of the operation? A. I believe so, yes.

Q. From start to finish.

I have just shown you Defendants' No. 4, which is a telegram from Mr. Finkelstein to Mr. Margolius. Would you please read it? A. Do you want me to read the entire telegram?

Q. If you please. [278] A. "Bernard Margolius, Suite" --

Q. I mean to yourself, excuse me. I would like to ask you something after that.

(Pause.)

A. If this were a meeting, I don't recall this meeting, September 30.

Q. I am not trying to suggest to you what it might have been and I didn't say it was a meeting. I am just trying to ask you if you had knowledge of the events and circumstances which are discussed in that telegram.

A. I don't recall.

Q. Thank you, sir.

Now, were you familiar with the fact, very shortly after you first met Mr. Perper, that he and Mr. Margolius were not getting along very well? A. I can't really answer that by a yes or no.

Q. On page 159 of your deposition were you asked this question:

"When did you first learn that there was some difference of opinion between Mr. Margolius and Mr. Perper?"

"A. I would say within a week or so after knowing Mr. Perper and seeing who he was and [279] knowing Mr. Margolius, I could see that there was a problem.

"Q. This was then about the --

"A. It was a personality conflict, it had nothing to do with our relationship."

Were you asked those questions and did you so answer? A. Yes, sir.

Q. Mr. Weiss, did you ever make any memorandum or was any memoranda made by you at any time with respect to what you say was the agreement entered into in Richmond, Virginia? A. No, sir.

Q. It is a fact, is it not, Mr. Weiss, that there were quite a number of drafts prepared of the joint venture agreement which had to do with Shirley Highway-Glebe Road? A. You mean between the promoters' group and the investors?

Q. Before there was a final draft to which everyone signed. A. Well, you are referring again to the promoters' group and the investors?

Q. I am referring to everybody, and I have particular [280] reference to those drafts which were introduced by Mr. Hilland yesterday. A. Yes, sir.

Q. And you had occasion, did you not, to talk to either Mr. Margolius or Mr. Deckelbaum about the agreement that was finally signed by all of the members of the joint venture? A. I believe so.

Q. And did you ever ask Mr. Margolius or Mr. Deckelbaum or did anyone else in your presence ever ask

them to put anything else in the agreement which was finally reached which was not contained in the agreement?

A. Not that I recall.

Q. Now, you have testified that there came a time -- let me go back a minute. Mr. Margolius indicated that from time to time there were differences of opinion between Mr. Perper and some of you gentlemen in connection with the Shirley Highway-Glebe Road venture and he characterized one of the meetings, or several of the meetings, as like a fishwives' meeting. Do you agree that that took place? A. Yes, sir.

Q. Now, you told us there came a time when you realized that Mr. Perper was going to build or had started to [281] build a motel near the Catholic University of America and the National Shrine of the Immaculate Conception, is that right? A. Yes, sir.

Q. When did you learn of that? A. As I recall, I became aware of this -- we had completed the Holiday Inn Motel and it must have been the end of 1960, possibly the fall or the winter of 1960. We opened up the motel in July, as I recall, of 1960.

Q. Did you ever speak to Mr. Perper on Mr. Margolius about this and claim to them that either you or the three gentlemen who are also plaintiffs had a right to participate in the development and building of that motel? A. I discussed it with Mr. Margolius, not Mr. Perper.

Q. I didn't ask you that, sir. I said did you ever discuss with Mr. -- I beg your pardon. What I meant to say was did you ever discuss this with Mr. Perper or with Mr. Savage? A. No, sir.

Q. Did you ever discuss it with Mr. Harold Perper? A. No, sir.

Q. Or Mrs. Sahm? A. No, sir.

Q. Or Mr. Alan Sahm? [282] A. No, sir.

Q. What was your position with the joint venture group in the fall or latter part of 1960? A. We were operating -- I'm sorry. We owned the Holiday Inn at Shirley Highway and Glebe Road. Prior to then we had discussed sites with Mr. Margolius and Mr. Perper.

Q. Excuse me. Perhaps you misunderstood me. What I wanted to know was your official position, if any, with the joint venture group at the end of 1960. A. I was a partner.

Q. Did you have any obligation or requirement of signing checks that were sent out to the other joint venturers with respect to the distribution of monies received? A. Yes, sir.

Q. Now, the motel was leased to a gentleman, by the name of Norman Shapiro, was it not? A. Well, it was leased to a corporation of which he was one of the principals, I believe.

Q. He is actually the president, is he not, of the corporation that leased it? A. I don't know whether he is president. I don't know his title, but he certainly has the principal role in the tenancy.

[283] Q. Is he the one that you principally dealt with when it was necessary, of course, to have some contact between the joint venture group and the corporation that leased it? A. Yes, sir. The only reason there was a hesitancy, we also discussed it with his attorney.

Q. Now, in connection with your official capacity to sign the checks that were issued to the various members of the joint venture group, where did you go to sign these checks? A. In Mr. Savage's office.

Q. And where was Mr. Savage located at that time? A. I believe on 15th Street in Washington.

Q. And how frequently did you go to Mr. Savage's office at that time? A. Well, if I signed the checks it would be at least once a month. Occasionally Mr. Finkelstein would sign the checks. I don't recall specifically. If I signed the checks it would be one time during the month.

Q. As a matter of fact, that has continued from that day until this, has it not, Mr. Weiss? A. Mr. Finkelstein and myself have alternated in the signing of checks with Mr. Savage. Many times, however, he is not in the office when I come in.

Q. But there have been many times when he has been [284] there, have there not? A. Yes, sir.

Q. And you have then been going to his office, either you or Mr. Finkelstein, starting at least in 1960 and continuing up until the present time? A. Yes, sir.

Q. Did there come a time when he moved his office to the Universal Building up on the corner of Florida Avenue and Connecticut Avenue? A. Yes, sir.

Q. And did you continue going there? A. Yes, sir.

Q. When did you first start going to that building? A. I don't recall.

Q. Now, Mr. Perper also had an office in that building, did he not? A. Yes, sir.

Q. And it is a fact, is it not, that in addition to seeing Mr. Savage, that there were many occasions when you saw and talked with Mr. Frank Perper on the occasion of visits to that building? A. Very occasionally.

Q. But there were occasions when he was there and you [285] did talk to him? A. Yes, sir, but I can't be specific as to how many times or what we discussed.

Q. Now, on none of these occasions did you ever say to either Mr. Savage or Mr. Frank Perper or anyone else seated at this side of the counsel table that you felt that Mr. Perper or anyone else had breached an agreement with respect to the construction of motels in the metropolitan area of the District of Columbia, did you? A. That is correct, sir.

Q. As a matter of fact, there came a time, Mr. Weiss, did there not, when you applied for your own Holiday Inn franchise for a site on Baltimore-Washington Parkway? A. That is correct.

Q. When did you apply for that? A. In the spring or summer of '61.

Q. Now let me go back for a minute. When the joint venture group had been -- joint venture agreement had been finally reduced to writing, that set forth the interest of each of you gentlemen, besides yourself, Mr. Finkelstein, Mr. Broidie and Mr. Stolar? A. Yes, sir.

Q. And you felt, did you not, Mr. Weiss, that if there [286] were any other Holiday Inns constructed in this area, that all of these three gentlemen would be entitled to participate in view of the agreement that was reached in Richmond? A. At what time? I mean what period of time are you discussing? Until when?

Q. Well, did there come a time when you felt that any of these gentlemen was not entitled to participate with you? A. Yes, sir.

Q. When was that? A. When I became aware that Mr. Perper had broken that by going ahead on his own and acquiring the Catholic University site at the Shrine.

Q. And when was that? A. I believe, as I testified, sometime in the end of '60.

Q. And did you then believe that you had no requirement to engage in any further business as far as these three gentlemen at the counsel table, the other three plaintiffs, were concerned? A. Did I what? Would you please repeat?

Q. Did you then at that time decide that the three gentlemen who had been associated with you, who are plaintiffs, [287] you would not be required to participate in business with them further so far as developing motels were concerned? A. Oh, no, sir; I did not. I don't mean to say that. If that is what you understand, I did not say that.

Q. You felt that if you developed any motels they should participate? A. That is correct.

Q. Well, now, is it not a fact that when you filed your application with respect to a Holiday Inn on Baltimore-Washington Parkway, that there was one of these gentlemen who was not invited to participate with you? A. That is correct, sir.

Q. And who was that gentleman? A. Mr. Broidie.

Q. It is a fact, is it not, Mr. Weiss, that the only reason you instituted this law suit is because you were turned down for the franchise on Baltimore-Washington Parkway, isn't it? A. That is one of the reasons.

Q. You and your associates? A. No, that is one of my reasons. I can't speak for my associates.

Q. Also associated with you in the application for a [288] Holiday Inn franchise at Baltimore-Washington Parkway was Mr. Norman Shapiro, the president of the corporation which leases Shirley Highway and Glebe Road, is that not a fact? A. Yes.

Q. Are you in the process of building or are you affiliated with a syndicate or group which is presently building a Howard Johnson Motel and Restaurant in Virginia? A. Yes, sir.

Q. Where is that site located? A. On U.S. 1 and the Capitol Beltway.

Q. How far is that from Washington? A. Depending upon the direction. If you use the Woodrow Wilson Bridge, I would say a couple of miles. From the 14th Street Bridge, possibly another three or four miles.

THE COURT: How far away is it from the intersection of Shirley Highway and Glebe Road?

THE WITNESS: Well, it's a different road pattern, Your Honor. Geographically, as the crow flies, it could be a matter of just several miles. Our site at U.S. 1 is on the Beltway and U.S. 1, which is a different traffic pattern than Shirley Highway.

BY MR. GALIHER:

Q. When did you finish the construction of the Howard [289] Johnson Motel-Restaurant at Baltimore-Washington Parkway and commence operation? A. To the best of my recollection, it would be the beginning of '63. As I recall, construction was in '62.

Q. Did you know anything about the Catholic University Shrine Motel before an announcement appeared in the newspaper? A. I became aware of it the end of '60, I believe.

Q. And how did you find out about it at that time? A. I heard it through -- in some way through the real estate industry. I don't recall specifically. I became aware of it, however. When it appeared in the news-

papers, I don't know, but I know that I knew it before the announcement in the papers.

Q. Isn't it a fact, Mr. Weiss, that you applied for a Holiday Inn franchise at Holiday Inns of America before they even broke ground to build the Shrine Catholic University Motel in northeast Washington? A. Yes, sir.

Q. When did you retain counsel to institute this action that was filed in November of 1962? A. To the best of my recollection, it was either the spring or summer of '62.

Q. It is a fact, is it not, that Mr. Friedlander sent [290] no letter of claim on your behalf or on behalf of the other three plaintiffs in this case to Mr. Frank Perper or any of the other defendants before the suit was instituted? A. I don't recall.

Q. How many times did you talk to Mr. Margolius before you filed this action? A. I can't be too specific. A few times. I believe Mr. Finkelstein devoted more time with discussing this with Mr. Margolius than I did.

Q. Now, didn't Mr. Margolius tell you he did not intend to get mixed up in this in any way? A. Yes, sir.

* * *

REDIRECT EXAMINATION

BY MR. FRIEDLANDER:

Q. I show you Plaintiffs' No. 4, an exhibit, and ask you to examine it, not read it out loud, particularly the end of the first paragraph.

Can you tell me whether the information contained there relative to percentage of occupancy was information that you gave to Perper and Savage, or both or either, or whether they got it from some other source? Do you see in the [291] first paragraph? A. Are you referring to the information which we have been able to obtain regarding South Gate is that there is approximately 90 per cent and that they anticipate an occupancy rate of 70 per cent? I did not give them this information.

* * *

Q. Will you give me in chronological order, even if

you don't know the exact dates, the events that occurred after you heard that Mr. Frank Perper was going to build the motel at the Shrine? Can you tell us what happened up to the time that you applied for a franchise?

A. Well, I know we had discussed it with Mr. Margolius, he being an attorney and he being the individual that I [292] originally went to when I found the site, having not met Mr. Perper before, and we discussed this. He indicated, as you had mentioned --

Q. Keep your voice up. A. He indicated that he really did not want to get involved.

We personally did not want to get involved in litigation. What we were concerned about was that after becoming aware that Mr. Perper had started another deal, another Holiday Inn, we were not too concerned about our legal position at that point: we were concerned about having the right to go on our own and develop a motel, obviously a Holiday Inn, and we felt that there was absolutely no question that all of us would have the right to develop Holiday Inns as a result of the initial franchise on Shirley Highway and Glebe Road.

Q. When you made the application do you recall --

A. Previous to the application we had contacted Holiday Inn and Mr. Kemmons Wilson had come to Washington to see the site.

* * *

[293] Q. You were telling us that you had contacted Kemmons Wilson, the Chairman of the Board of the Holiday Inns of America? A. This is after we had made initial inquiry with Holiday Inns.

Q. And did he examine the site that you then had? A. Yes, sir, he did.

* * *

[294] Q. As a result of your conversation with Kemmons Wilson did you submit an application. A. Yes, sir.

Q. And did you then later receive a reply to that? A. Yes, sir.

Q. Was the letter addressed to you, reply addressed to you or to Mr. Finkelstein?

* * *

A. I believe it was addressed to me, but I'd have to refer to the letter.

* * *

[295] (Copy of letter dated Aug. 17, 1961 from Holiday Inns to Finkelstein marked Plaintiffs' Exhibit No. 16 and received in evidence.)

BY MR. FRIEDLANDER:

Q. In August of 1961 Plaintiffs' Exhibit 16 was mailed. It's dated that date.

After that date do you recall what happened prior to the time you saw -- A. I'm sorry. I am at a loss, Mr. Friedlander. What are you referring to? August '61, which letter?

Q. That is the second letter. In the summer of '61 you got your answer from Holiday Inns of America, is that correct? A. Yes.

Q. Now, after that, what happened in relation to your dealings with Frank Perper? Do you recall what happened? A. At that point there were no further discussions, to the best of my recollection, with Mr. Frank Perper.

Q. Did you learn of the sending by Mr. Perper of any notices to the Inns, the Holiday Inns? A. I remember hearing or possibly seeing a letter that Mr. Perper, I believe, had sent as a result of his Shrine Motel, where he was advising the various innkeepers all over [296] the network of Holiday Inns that when they had inquiry regarding Washington, that they send their referrals to his Shrine Holiday Inn.

* * *

[297] THE COURT: What bearing does that have on the issues? I have only one question to decide, namely, was there a binding oral agreement made in Richmond in April '59 by which all these plaintiffs and defendants became members of a joint venture. That is the only question I have to decide.

* * *

BY MR. FRIEDLANDER:

Q. Mr. Weiss, did there come a time when any particular overt act induced you to seek counsel about this matter?

* * *

[298] THE WITNESS: When I became aware of the Roslyn Motel, which was a motel -- I don't recall when this came about, but I became aware that Mr. Perper had or was about to acquire an interest in Roslyn, which was in direct conflict and geographically very close to the Holiday Inn that we had at Shirley Highway. It was a matter of, at best, several miles, in Arlington.

THE COURT: You didn't take any steps to bring this action after you learned of the --

THE WITNESS: Also denied the Holiday Inn franchise for myself.

THE COURT: You didn't take any steps to bring this action when you learned that Mr. Perper was building a Holiday Inn near Catholic University, did you?

THE WITNESS: No, sir, because at that point I was not aware that I would be denied the franchise.

THE COURT: You weren't aware of what?

THE WITNESS: I would not be aware that I would be [299] denied the franchise.

When I became aware of the Shrine --

THE COURT: You now claim that you were entitled to be a partner in Mr. Perper's Holiday Inn at Catholic University, is that right?

THE WITNESS: That is correct.

THE COURT: But when you learned or heard by rumor that Mr. Perper was building a Holiday Inn at Catholic University you didn't take any steps to bring this law suit, did you?

THE WITNESS: I didn't think at that time I had any legal right. I was unaware that I would have any legal right.

THE COURT: In other words, you weren't sure then whether you were entitled to be a partner in the project or not?

THE WITNESS: I was assured that we were partners, but that did not tell me that I had any legal steps to acquire that right.

THE COURT: Well, you didn't take any steps to ascertain whether --

THE WITNESS: Other than speaking to Mr. Margolius, who indicated he didn't want to get involved, that is correct, until I had met Mr. Friedlander.

[300] BY MR. FRIEDLANDER:

Q. Why didn't you think -- why did you doubt that you had rights under the partnership or joint venture agreement? A. Well, in the normal conduct of the real estate business everything is in writing and I just felt that, as a result of this, that we had no right.

Q. Because it wasn't in writing? A. It was not in writing.

Q. Actually, the decision to take action came because of a series of events which brought you to my office, is that correct? A. That is correct.

Q. And the series of events that brought you to the office you have already enumerated? A. Yes, sir.

Q. Step by step? A. Yes, sir.

Q. Now, I take it when you went to my office you learned that partnership agreements did not always have to be in writing? A. That is correct. I was unaware of that.

* * *

[301] RECROSS EXAMINATION

BY MR. GALIHER:

Q. Mr. Weiss, isn't it a fact that you testified during the course of my cross examination that when you learned of the fact that Mr. Perper was about or was constructing Catholic University Shrine you felt that you, and all of you, had a right to develop motels in this area? Didn't you so testify? A. Yes, sir.

* * *

[302] THE COURT: You tried to develop a Holiday Inn on the Baltimore-Washington Parkway?

THE WITNESS: Yes, sir.

THE COURT: Within the metropolitan area?

THE WITNESS: Yes, sir.

THE COURT: Did you tell Mr. Perper that you were going to do it?

THE WITNESS: No, sir. He didn't tell me he was building the Shrine.

THE COURT: In other words, you felt that you had a right to do it, is that right?

THE WITNESS: I felt that I had the right under the initial franchise to develop another Holiday Inn, yes, sir.

THE COURT: You didn't think that you were under any obligation to take Mr. Perper into the project, did you?

THE WITNESS: Yes, sir, as he felt that he had no right to bring to my attention the Holiday Inn at the Shrine. He did not discuss it with me, yes, sir.

MR. FRIEDLANDER: May I ask one other question, if Your Honor please, in line with the Court's question, sir?

[303]

[FURTHER REDIRECT]

BY MR. FRIEDLANDER:

Q. Did you know at that time or had you been advised at that time, the time that you learned about the Shrine and the time that you decided to apply for the Beltway franchise, did you -- A. You mean the Parkway franchise?

Q. Parkway. Did you have any knowledge or information or advice as to whether you could enforce an oral contract for partnership? A. No, sir.

MR. GALIHER: I object to that, Your Honor.

MR. FRIEDLANDER: I think it goes to intent in this case.

THE COURT: Well, I will allow that. I think it is innocuous.

Well, even if you weren't sure that the oral contract which you say you have could be enforced, you weren't

willing to comply with it as to Mr. Perper, were you, so far as your Holiday Inn on the Baltimore-Washington Parkway is concerned, is that correct?

THE WITNESS: Would you please repeat, Your Honor? I didn't understand the question.

THE COURT: Suppose we have that read.

(The reporter read the last question propounded by the Court.)

[304] THE WITNESS: Yes, sir, I felt he had broken our commitment when he went ahead on his motel.

THE COURT: Very well. In other words, you felt that because he broke his contract with you, you were entitled to break your contract with him, is that it?

THE WITNESS: Well, I don't think I actually thought in terms of this when it occurred. I didn't want to go to the point of initiating any litigation as long as I had the right.

THE COURT: Anything further of this witness?

FURTHER RECROSS EXAMINATION

BY MR. GALIHER:

Q. In other words, as long as you could get your franchise you were not disposed to do anything about it?

A. That is correct. I did not want to initiate any litigation.

This is the first time I have been in court, Your Honor.

* * *

MORRIS D. STOLAR

a Plaintiff, called as a witness, having been duly sworn, was examined and testified as follows:

[305] DIRECT EXAMINATION

BY MR. FRIEDLANDER:

Q. Will you state your full name, sir? A. Morris D. Stolar, S-t-o-l-a-r.

THE COURT: You will have to talk so everyone in the courtroom can hear you. You are in a big courtroom with a high ceiling, you are not in your own office.

Suppose you repeat your name.

THE WITNESS: Morris D. Stolar.

BY MR. FRIEDLANDER:

Q. And your address? A. 2406 Esther Court, Silver Spring, Maryland.

Q. And what business or profession are you in? A. Real estate business.

Q. How long have you been so engaged? A. Approximately 20 years.

Q. And during that period have you practiced real estate or performed your functions in the metropolitan area of Washington? A. Yes.

Q. Did there come a time in April of 1959 when you attended a meeting in Richmond, Virginia? A. Yes.

Q. Will you tell us who was present at that meeting?
[306] A. Robert Weiss, Norman Finkelstein, Jacob Broidie --

THE COURT: Don't go so fast. Suppose you start again.

THE WITNESS: Robert Weiss, Norman Finkelstein, Jacob Broidie, Bernard Margolius, Frank Perper, myself, Ralph Deckelbaum.

BY MR. FRIEDLANDER:

Q. Can you tell us the substance of the agreements, if any, were reached at that meeting relating to any joint venture for the development of the metropolitan area of Washington with Holiday Inn motels? A. The substance of our agreement was that we would pursue the obtaining of the site at Shirley-Glebe Highway and to get a franchise for that site and to build a Holiday Inn Motel on that site and, stemming from that, to search for other sites in the metropolitan area of Washington and to develop the area with Holiday Inns in that area.

We came away with the understanding that our group, Robert Weiss, Norman Finkelstein, Jacob Broidie and I, would have a 50 per cent interest and the group of Margolius and Perper, Frank Perper, would have the other 50 per cent, reduced by any outside equity that was brought into any individual deal.

[307] Q. Did this agreement contemplate the acquisition of the Glebe and Shirley Highway site? A. Yes, it did.

Q. And did it contemplate a franchise from the Holiday Inn Motel? A. Yes.

Q. Did you participate in the trip to Memphis, Tennessee? A. No.

Q. And did you attend any meetings after the Richmond visit? A. Yes.

Q. And do you know of your own knowledge whether the motel at Glebe Road and Shirley Highway was completed? A. Yes.

Q. And did there come a time when you authorized this suit to be brought? A. Yes.

* * *

CROSS EXAMINATION

BY MR. GALIHER:

Q. Mr. Stolar, you have been associated with the [308] other gentlemen with you, the plaintiffs in this case, for a number of years, have you not? A. Yes.

Q. You are or were a shareholder in the corporation which was constructing property, homes, in Arlington, Virginia? A. Yes.

Q. Was that the first time you gentlemen had been together, the four of you together? A. No.

Q. You had been together on other enterprises and on other operations? A. Yes.

Q. For how long a period of time? A. As a group, from 1956 to approximately -- well, to the motel time, that is the 1959-'60 period.

Q. And had you reduced to writing in most instances the arrangement between you in connection with the various enterprises? A. We reduced in writing the building corporation's activities as to our interests in those -- excuse me, I am thinking in terms now of Weiss and Stolar. There was no reduction to writing of our agreement in that instance.

Q. Mr. Savage had been your accountant for a num-

ber [309] of years prior to the building of the Shirley Highway-Glebe Road Motel? A. Yes.

Q. When did you first meet Mr. Perper, on the occasion of the meeting in Richmond? A. Yes.

Q. Did you soon become aware that there were difficulties existing between he and Mr. Margolius at that time or afterwards, shortly afterwards? A. Sometime afterward I was aware that there were difficulties.

Q. Did you ever make any memorandum concerning the meeting in Richmond? A. No, sir.

Q. Did you ever make any memorandum concerning any other meetings and the agreement which you say was reached in Richmond or subsequently at Mr. Margolius' office? A. No, sir.

Q. When did you find out that Mr. Perper was constructing any motels anywhere other than the one at Shirley Highway and Glebe Road?

I don't mean he constructed that, but I mean did there come a time when you learned that Mr. Perper and persons [310] with whom he might be associated was building other motels in this area? A. The first I knew of his building another motel in the metropolitan area of Washington was when the Shrine Motel was being built, and that came to my knowledge sometime in the latter part of 1961.

Q. You had no knowledge, then, until that time? A. That is correct.

Q. Is there any way you could pinpoint that date? A. Yes, I can.

Q. Would you tell us the date and how you recall the date? A. I recall -- are you talking about the latter part of 1961 that I first became aware of the --

Q. Yes, sir. A. It was because it was subsequent my investing in a group of motels to be built in the New England area of the country.

Q. With Mr. Perper? A. With a group called the Frank M. Perper Motel Associates.

Q. And what date would that be, then? A. The date that I entered into that?

[311] Q. Yes, sir. A. As close as I can come to it from records that I have checked, it's June the 8th, 1961

Q. That would not, then, be the latter part of 1961, as you said earlier? A. That would be the middle part of 1961.

MR. FRIEDLANDER: If the Court please, I don't think counsel has stated correctly the witness' testimony. The witness in referring to the latter part of 1961 was referring to one event --

THE COURT: That is no reason for interrupting a cross examination. The witness can take care of himself. That is not a basis for excluding a question.

MR. GALIHER: Your Honor, I can assure you if there is any confusion I don't intend to confuse the witness, and with that in mind I will try to clear it up.

THE COURT: I am sure no counsel in this case would mislead any witness.

BY MR. GALIHER:

Q. Let me ask you this again to make sure that there is no confusion as to this.

Did I misunderstand you when I thought you said a few minutes ago that you learned of the construction by Mr. [312] Perper of another motel in this area in the latter part of 1961? A. That is correct.

Q. Was that correct? A. Yes.

Q. All right. Then I asked you to pinpoint the date, if you could, and you said that sometime in June of 1961 you invested in certain other motels, Frank M. Perper and Associates, in New England.

Now, is that the time you learned of the construction in this area, or is it still the latter part of 1961? A. Still the latter part of 1961, because I am certain that I was unaware of the construction of the Shrine Motel when I went into that other investment.

Q. Well, when would it have been in the latter part of 1961 that you learned of the construction of the Shrine Motel at Catholic University? A. It's hard to say exactly, but it must have been some several months later than June of 1961.

Q. Well, isn't it a fact that before you had learned of the construction or the commencement of construction of the Shrine at Catholic University, that you and Mr. Weiss and Mr. Finkelstein and Norman Shapiro and Russell Wein had [313] applied for a Holiday Inn franchise at Memphis, Tennessee? A. As you state the question, it is not a fact.

Q. Specifically, do you deny, Mr. Stolar, that on July 3rd, 1961 application was filed or sent to Holiday Inns of America applying for a Holiday Inn franchise on the Baltimore-Washington Parkway? A. I deny that I was aware of it or had anything to do with it.

THE COURT: Well, were you associated with Mr. Weiss in the enterprise on the Baltimore-Washington Parkway?

THE WITNESS: I was associated as a limited partner or as an investor.

THE COURT: So you were active in that project?

THE WITNESS: Only by putting up a check for a certain amount of money.

* * *

[314] BY MR. GALIHER:

Q. Didn't you witness the application that was filed in that case, Mr. Stolar, on July 3rd, 1961? A. It's conceivable that I witnessed a signature on some form, but what it was I was not aware.

Q. Well, do I understand that you had nothing to do with either the attempt to secure a franchise from Holiday Inns, is that the position that you are taking? A. I'm sorry, I didn't follow you.

THE COURT: Suppose we have the question read, then.

(The reporter read the last question.)

THE WITNESS: That is correct.

BY MR. GALIHER:

Q. Did you tell Mr. Weiss or Mr. Finkelstein that under the agreement which had been reached in Richmond, Virginia, in April or subsequently in Mr. Margolius' office, that if they were going to get a Holiday Inn

franchise and build a [315] motel, that you were entitled to be a partner in the deal? A. No.

Q. As a matter of fact, Mr. Stolar, you have invested in the Holiday Inn Motel with which Mr. Frank Perper is affiliated in Roslyn, Virginia, have you not? A. Excuse me. I am little bit nervous on that question. I want to make it clear --

THE COURT: Suppose we have the question read.

THE WITNESS: I understand the question.

THE COURT: Very well.

THE WITNESS: But it takes a little more than just a yes or no to answer it.

THE COURT: Very well.

THE WITNESS: At the request of my brother in 1961 I invested with him in what was going to be a group of motels to be built in the New England area called Holiday Inn Juniors. I did that by putting up my check with my brother on June 8th, 1961. Subsequent to that time I became aware that negotiations were taking place with regard to a motel in Roslyn or a site in Roslyn, but this was the first knowledge I had of that.

THE COURT: Well, you haven't answered the question.

Read the question.

BY MR. GALIHER:

Q. Do you have an interest in a Holiday Inn in Roslyn, [316] Virginia, with which Mr. Frank M. Perper and some of these folks at the counsel table are associated?

A. I have an interest in the Frank M. Perper Associates group, which is called a fifty group, and what that group owns completely I am not certain of. But I do understand that the Roslyn Motel is part of that group at this time.

Q. Did you, when you learned of the construction of the Roslyn Motel, or earlier, when you learned of the Catholic University Motel, ever go to Mr. Perper or to Mr. Savage or to Mrs. Sahm or to Mr. Harold Perper or to Mr. Alan Sahm, and say: under agreement reached

in Richmond, Virginia, and later in Mr. Margolius' office I am entitled to participate in those ventures? A. The only one I ever went to for any purpose was Mr. Savage, and the answer is no.

Q. When did you go to Mr. Savage? A. That was on various occasions with regard to our Weiss and Stolar business, and I accompanied Mr. Weiss from time to time to his office with regard to the motel business.

Q. But you on those occasions never raised any question about your right to participate in any additional motels in which Mr. Frank Perper might have an interest? [317] A. I don't recall raising any question.

* * *

[320] Q. Mr. Stolar, when you made the investment that you referred to yesterday with Frank M. Perper and Associates sometime in 1961 or early in 1962, you did not tell the other three gentlemen who are plaintiffs that you had made the investment, did you? A. Not at the time I made it, no, sir.

Q. And you invested \$44,000 in the group that ultimately was responsible for bringing into existence the Holiday Inn at Roslyn, did you not? A. No, I did not.

[321] Q. Well, did you and your brother together invest \$44,000? A. The total investment made was \$44,000.

* * *

REDIRECT EXAMINATION

BY MR. FRIEDLANDER:

Q. What was the investment made in? A. The investment was made in a venture that was going to develop Holiday Inn Junior motels in the New England area of the country.

MR. FRIEDLANDER: Thank you.

THE COURT: Well, this investment was also in the Holiday Inn in Washington-Baltimore Parkway, was it not?

THE WITNESS: No, sir, not this investment.

THE COURT: Not this investment?

MR. FRIEDLANDER: No.

RECROSS-EXAMINATION

BY MR. GALIHER:

Q. Mr. Stolar, the investment at Baltimore-Washington Parkway was a completely different investment, was it not? A. Yes, that is correct.

Q. And Mr. Broidie, one of the plaintiffs in this case, was not in that investment at all, was he? [322] A. To the best of my knowledge, he was not.

FURTHER REDIRECT EXAMINATION

BY MR. FRIEDLANDER:

Q. Mr. Stolar, at the time you and your brother arranged to invest in these Holiday Inn Juniors as they were called, was it understood they would not be in the metropolitan area of Washington? A. Yes.

MR. GALIHER: I object to that, Your Honor.

THE COURT: What is the ground of your objection?

MR. GALIHER: I will withdraw my objection, Your Honor.

THE COURT: Very well.

FURTHER RECROSS-EXAMINATION

BY MR. GALIHER:

Q. But thereafter the group went into Roslyn, Virginia, did it not? [323] A. That is my understanding. I had no control over that.

* * *

MR. GALIHER: Thank you.

THE COURT: Well, did you have an investment in the Holiday Inn at Roslyn, Virginia?

THE WITNESS: The investment, Your Honor, was made originally for the purpose of constructing small motels in the New England area of the country.

Subsequently, Mr. Perper and his associates, who controled the situation completely and the investors had no say in the matter whatsoever, subsequently they changed the nature of the type of construction, they started to build --

THE COURT: No, my question to you was did you have an investment in the inn at Roslyn?

THE WITNESS: At the time of my investment, when it was originally made?

THE COURT: At any time.

THE WITNESS: Eventually there came a time when Roslyn Motel, I believe, became part of this venture.

* * *

[332] MR. FRIEDLANDER: At this point, if we might, I would like to offer in evidence applications to the Holiday Inns of America, consisting of four separate sheets.

THE COURT: Have you shown it to the other side?

MR. FRIEDLANDER: I got them from Mr. Galiher. He handed them to me.

THE COURT: Let them be admitted.

MR. FRIEDLANDER: I might ask counsel for Mr. Perper whether it is stipulated that those applications are in the handwriting of Mr. Perper?

MR. GALIHER: Yes, sir.

* * *

[333] THE DEPUTY CLERK: Plaintiffs' Exhibits Nos. 20 and 21 marked for identification.

MR. GALIHER: Only the signature.

MR. FRIEDLANDER: We will stipulate that the signature is that of Frank M. Perper.

THE COURT: Let them be admitted.

THE DEPUTY CLERK: Plaintiffs Exhibits 20 and 21 marked in evidence.

(Application to Holiday Inns signed by Frank Perper marked Plaintiffs' Exhibit No. 21 received in evidence)

* * *

[346] MR. GALIHER: Here is the reply, Your Honor, right here, June 23rd.

THE COURT: That is what I thought. You are referring to Defendants' Exhibit 1?

MR. GALIHER: Yes, sir, the telegram first, and then that letter.

THE COURT: And the telegram didn't give an area franchise, but a site franchise. I thought that was what--

MR. HILLAND: No; may I read the telegram, Your Honor?

THE COURT: Yes, indeed.

MR. HILLAND: The telegram says:

[347] "Upon receipt, application and check, franchise for specified Washington location will be granted."

Not a specific, but specified Washington location.

THE COURT: To me that means a particular location, not a whole area.

* * *

JACOB M. BROIDIE

a Plaintiff, called as a witness, having been duly sworn, was examined and testified as follows: [348]

DIRECT EXAMINATION

BY MR. FRIEDLANDER:

Q. Will you state your full name, sir? A. Jacob M. Broidie.

Q. How do you spell the last name? A. B-r-o-i-d-i-e.

Q. And what is your residence address? A. 8201 - 16th Street, Silver Spring, Maryland

Q. And what business are you engaged in? A. I am a builder.

Q. Do you hold a real estate broker's lisense? A. No sir, I do not.

Q. Did there come a time when you and others were in Richmond, Virginia, namely, on April 26, 1959? A. Yes, sir.

Q. At that time did you attend a meeting? A. Yes, sir.

Q. And do you recall where the meeting was? A. It was held at the Holiday Inn in Richmond, Virginia.

* * *

[349] Q. Where was the meeting? A. The meeting was held at the Holiday Inn in Richmond, Virginia.

Q. Who was present? A. The four plaintiffs, including myself, namely, Robert Weiss, Norman Finkelstein, Morris Stolar, myself, Frank Perper, Bernard Margolius, Ralph Deckelbaum.

Q. Will you tell us in substance what was agreed to at that meeting, if anything, in relation to the Holiday Inns? A. We agreed in our discussion to develop the Washington area with Holiday Inns, starting with the Holiday Inn to be located at Shirley Highway and Glebe Road.

Q. Did you at that time agree on the division between the parties? A. Yes, sir. We agreed that the group I belonged to, namely, the plaintiffs, should have 50 per cent of the group—50 per cent of the deal, pardon me, and the other group, namely, Margolius, Deckelbaum, Perper, to have the other 50 per cent, to be subsequently reduced with any outside [350] capital that might be invested.

Q. Did you at any time have any arrangements, agreements or contracts with Harold Perper? A. No, sir.

Q. Do you recall ever having met Harold Perper? A. No, sir, at that time, no, sir.

Q. Did you later meet him? A. Possibly. I don't recall. It was no normal meeting. I met him at one time.

Q. Did you ever combine and build a motel at Glebe Road and Shirley Highway? A. Yes, sir, we did build a motel there.

Q. And at the time of the completion of said motel or the addition to the hotel, had you learned or had you heard that Frank Perper was engaged or attempting to build another motel, Holiday Inn, in the Washington area? A. Yes, I had heard.

Q. Now, from that time on have you ever invested in any motel? A. No, sir, I have not.

Q. Have you done anything towards building any motels? A. No, sir, I have not.

Q. And you brought this suit under the contract made [351] in Richmond? A. Yes, sir.

* * *

CROSS EXAMINATION

BY MR. GALIHER:

* * *

[352] Q. Did you attend the one the following Saturday in Mr. Margolius' office? A. Yes, sir.

Q. Who do you recall was there at that time? A. To the best of my recollection, it was the four plaintiffs, including myself, Margolius, Deckelbaum, and Perper, and Savage I think was there.

* * *

Q. And you have told us it was your understanding, as a result of the Richmond agreement, that you would continue to be in business with these other three gentlemen that you had been associated with before, as well as the other folks that you have mentioned, in the building of motels in the Washington area, is that right? A. If you have reference to the meeting in Richmond, yes.

Q. Were you ever invited by Mr. Weiss or Mr. Finkelshtein or Mr. Stolar to participate in the building of a motel and the securing of a franchise at Baltimore-Washington Parkway? [353] A. No, sir.

* * *

[354] Q. Now, Mr. Broidie, have you seen this telegram that was offered into evidence yesterday? A. No, sir; I saw it passed around, but I did not examine it.

Q. Did you see the letter of June 6, marked Plaintiffs' Exhibit 4? A. I have not seen it up to now, no.

(Pause.)

Q. You have never seen this before this moment? A. To my best recollection, I don't recall.

MR. GALIHER: May I hand it up to Your Honor?

BY MR. GALIHER:

Q. You noticed it referred to you in it? A. Yes, sir.

Q. What about these two documents, have you ever seen these? I am showing you now Defendants' No. 3 and Defendants' No. 1.

(Pause.)

Q. Never seen those? A. I don't recall offhand, no, sir.

Q. You did learn that a franchise had been granted for a motel to be constructed at Shirley Highway and Glebe Road, did you not? [355] A. Yes, sir.

Q. And you knew also that the franchise that was granted was solely for that location, did you not? A. To get into the technicalities of the franchise, I did not get involved into it after the franchise was granted.

Q. Well, didn't you see the franchise that was granted? A. The only time I saw it was at a meeting in Silver Spring. There was some discussion about the franchise.

* * *

[356] Q. When did you learn that Mr. Perper and other folks who were interested with him were constructing or had constructed a motel at the Catholic University of America? A. The first recollection I have of that—this is strictly my recollection—was sometime the latter part of '61 or '62.

[357] Q. And did you ever go to him and talk to him about that? A. No, sir.

Q. Or say to him or write to him that you felt that you were entitled to participate in that investment? A. No, sir.

Q. Did you ever make a memorandum of any of the meetings, starting with Richmond, Virginia, up to the time you instituted legal action against Mr. Perper and

the other defendants? A. No, sir, I never made any memorandums.

Q. Did you ever contact him prior to the institution of suit or any of the other folks who are defendants here, either personally or in writing, and make a claim that you felt that there was a binding agreement with respect to Mr. Perper concerning other motels that he would construct or would construct with others? A. No, sir.

REDIRECT EXAMINATION

BY MR. FRIEDLANDER:

Q. Mr. Broidie, did you go to Memphis, Tennessee?
[358] A. Yes, sir.

Q. And who did you go with? A. Mr. Robert Weiss.

Q. And while you were there did you participate in any conversation with an officer of the Holiday Inns of America? A. Yes, sir, we met with Mr. Kemmons Wilson.

Q. And in your presence did Mr. Wilson make a telephone call? A. Yes, sir.

Q. Do you know who he called? A. He turned to us and asked us if it would be all right if he called Mr. Frank Perper in Washington.

Q. And was such a call made? A. Yes, sir.

Q. And thereafter did he discuss the matters with you? A. Mr. Wilson?

Q. Yes. A. Yes, sir.

Q. Now, when you returned to Washington did you have any conversation with Mr. Savage concerning your trip? A. No, sir. Mr. Robert Weiss—.

* * *

[359] Q. In other words, you didn't have anything to do with the transaction after you returned to Washington?
A. Right, sir.

* * *

[360]

NORMAN FINKELSTEIN

a Plaintiff, called as a witness, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FRIEDLANDER:

Q. Would you state your full name, sir? A. Norman Finkelstein.

Q. And what is your address, residence address? A. 4201 Cathedral Avenue, Northwest, Washington, D.C.

Q. And what business or businesses are you in? A. I am a licensed real estate broker and realtor. I am a builder and land developer.

Q. Are you presently engaged in the development of any land in the metropolitan area? A. Yes, sir.

Q. Are you presently engaged in developing any large tracts of land? A. Yes, sir.

Q. Where is that? A. We have the good fortune, or rather I have the good fortune to be president of the New Dover Land Corporation, which is, I am told by the newspaper people, holder in fee and in contract of the largest tract of undeveloped land in the [361] bounds of the original Federal City. It is located a matter of a mile or a mile and a half from the District line on the banks of the Potomac River in Arlington County.

Q. Now, have you during your practice as a broker had occasion to seek out and find locations for various development, buildings, and so forth? A. Yes, sir.

Q. And you have been engaged in that business how long? A. As a salesman for four years and as a broker for ten years, sir.

Q. And during the period have you known Mr. Bernard Margolius? A. Yes, sir.

Q. How long have you known him? A. My acquaintance with Mr. Margolis goes back to school days.

Q. Now, did there come a time when you learned that Mr. Margolius, in addition to being a very excellent law-

yer, had been successful in motel developments? A. Yes, sir.

Q. And you were aware of that in 1959? A. Yes, sir.

[362] Q. And did there come a time when in the seeking for property you found a location at Shirley Highway and Glebe Road? A. Yes, sir.

Q. And in whose company were you when you found that property? A. The property had been presented to two of my associates, Robert Weiss and Jacob Broidie. They took me there to show it to me.

Q. Now, when you saw this site were you interested? A. Yes, sir.

Q. Then what did you do about that site? A. Mr. Weiss contacted Mr. Margolius and discussed with him the possibility of developing this site for a motel, specifically a Holiday Inn.

Q. And why did you and Mr. Weiss want a Holiday Inn? A. A Holiday Inn franchise was then and has since become immeasurably more valuable. It is an aggressive, productive company which has built many hundred motels or franchised many hundred motels throughout the nation. It is a name and a franchise of great value.

Q. Did you know, prior to the meeting with Mr. Margolius, that the motels that he was developing were Holiday [363] Inns? A. Yes, sir.

Q. And as a result of your meeting with Mr. Margolius did you later meet someone else? A. Yes, sir.

Q. What did the defendant Margolius state to you as to why you were to meet another person?

MR. GALIHER: I object to his statement as to why he was going to meet some other person.

THE COURT: Objection sustained.

MR. FRIEDLANDER: Well, if Your Honor please, Mr. Margolius is a nominal defendant and although it may not be binding on the defendant Perper, it certainly is admissible.

THE COURT: You asked no relief against him. He is joining in the prayer for relief that you are requesting, and therefore he is not an adverse party.

MR. FRIEDLANDER: We tender to prove—Your Honor has sustained the objection—we proffer at this time, there be no jury I will make it here.

THE COURT: Yes, you may make your proffer.

MR. FRIEDLANDER: We proffer to prove Mr. Margolius would not undertake any Holiday Inn developments unless his partner Perper was involved.

[364] THE COURT: Well, we have had testimony to that effect. This would be cumulative, anyway.

* * *

Q. Did you, as a result of your arrangements then made, meet with one Frank Perper and others in Richmond, Virginia? A. Yes, sir.

Q. And can you fix the date or time of that meeting? A. It was April 26th of 1959.

Q. And do you recall who was present at that meeting? A. Yes, sir.

Q. I am speaking now of the business meeting. A. I understand, sir. Mr. Robert Weiss, Mr. Morris Stolar, Mr. Jacob Broidie, and myself. Mr. Bernard Margolius, Mr. Frank Perper. Mr. Deckelbaum had journeyed to Richmond with us in my car; he was present at the business meeting on and off because he had gone there to attend to other business on behalf of the Richmond Holiday Inn, so that he was not continuously present at our business meeting.

Q. Now, how long did this meeting last? [365] A. It lasted several hours because there were intermittent interruptions. We had met there for our purposes, but they had met there for purposes of their own, as well as ours, and so both affairs were conducted at the same time; not together, but at various times.

Q. Do you recall where your discussion of the matters that you were taking up with Perper and Margolius, where that occurred, what place? A. My best recollection is that they occurred, at least in part of the discussion, around the swimming pool, which was not then in use. A further continuance of the discussion occurred in the

dining room of the Charcoal Hearth Restaurant there, when we were having a late lunch. A further continuance of the discussion I believe occurred in a secluded portion of the lobby.

Q. And as a result of this meeting was there any definite agreement reached? A. Yes, sir.

Q. Was that agreement ever reduced in writing? A. To my knowledge, no, sir.

Q. Did you at any time write a letter setting forth [366] the terms of the agreement? A. No, sir.

Q. Did you reach an agreement, however? A. Yes, sir.

Q. Tell us what it was. A. We agreed that we would build Holiday Inns, we would develop the metropolitan area of Washington with Holiday Inns; that the beginning of this joint venture was to be the Holiday Inn to be built at Shirley Highway and Glebe Road. This one site was at that time contingent upon our obtaining an option on the land, which we knew we could do, and upon obtaining a franchise; and that as a result of the obtaining of an option on the land and subsequent fee title and the franchise, we would have the right to develop the rest of the Washington Metropolitan area.

Q. Now, how were you going to divide the interest between the groups? A. We were there as two groups. One, the group which consisted of myself, Robert Weiss, Morris Stolar, Jacob Broidie. The other group consisted of Bernard Margolius. This doesn't mean that our interests were inimical. There were simply two groups. We were to assume that any location would start [367] with a totality of 100 per cent of interest, which was to be divided 50 per cent, share and share alike, between each group or to each group; that as outside venture capital was brought into each site in the amount necessary, we would determine what per cent of that 100 per cent was necessary to be given to the venturers, and the remainder was to remain in the possession of the promoter joint venture, share and share alike between the two groups.

Q. Was any arrangements made as to how your group would divide between yourselves? A. At that time, no, sir.

Q. Was any arrangement made how Mr. Margolius and Mr. Perper would divide their interest? A. If such an arrangement was made, I knew nothing of it.

Q. It wasn't made in your presence? A. That is right, sir.

Q. Now, did there come a time after this agreement had been made that you returned to Washington? A. Yes sir.

Q. And did you later take any steps in furtherance of the joint venture which you had made? A. Immediately upon our return to Washington we [368] contacted the broker who had first presented the property to us and had told us that an option to buy an existing contract was available to us, and we told him that we wanted to consummate a contract to buy the contract on the site.

Q. And did you then obtain a binding contract or option in writing? A. We did, sir.

Q. And what next was done? A. Following the obtaining of the option we notified the parties to the meeting that we had obtained this option and a meeting was set for the following Saturday at the office of Mr. Bernard Margolius.

Q. There had been some indication in the deposition of Mr. Perper that he did not go to Mr. Margolius' office. Was he there? A. He was there, sir.

Q. And who else was there? A. Again the four of us, Mr. Weiss, Mr. Stolar, Mr. Broidie, Mr. Margolius, Mr. Perper. I believe Mr. Deckelbaum and I believe Mr. Savage. I cannot say as to whether Mrs. Perper was present at that meeting or not.

Q. Now, at that meeting do you recall what was done, what was agreed upon? [369] A. Yes, sir. We advised the people and showed them physical possession of the option agreement to purchase the contract on the site at Shirley Highway and Glebe Road. We again discussed and reaffirmed the conditions of our meeting at Richmond.

Now we had taken a great step forward. We had the site which was going to lead to the franchise, which would lead to the area rights.

Q. Now, what was determined about Memphis, anything going to Memphis? A. I believe it was discussed that people would go to Memphis to obtain the franchise; whether then or shortly thereafter, I do not recall.

Q. To your knowledge, did anybody go to Memphis to obtain the franchise? A. Yes, sir.

Q. Who went? A. Mr. Robert Weiss and Mr. Jacob Broidie went to Memphis.

Q. Now, did there come a time that you ever saw the applications for the site? A. You mean for the franchise, sir?

Q. For the franchise. [370] A. No, sir, I have never seen that application until it's been presented.

Q. But did you learn from your conversations whether or not an application for a franchise had been made? A. Yes, sir.

Q. Now, did you take any steps towards other sites?

A. Not at that time, sir, but subsequently I did.

Q. Now, what happened next, after the trip to Memphis and the resulting information that you obtained? What did you do next? A. Mr. Weiss and Mr. Broidie returned from their trip to Memphis and they were very gratified at what had taken place there. They told me that they had met with Mr. Wilson, who had—

MR. GALIHER: I object.

THE COURT: Objection sustained.

* * *

A. Mr. Weiss and I told Mr. Savage of the result of the meeting in Memphis and it was suggested that this be confirmed in writing.

[371] Q. As a result of that did you ever see the letter that Mr. Savage sent? A. Yes, sir.

Q. And when did you see it? A. I don't recall. It is possible that I saw it shortly after it was sent and re-

ceived a carbon copy, but it registered most deeply in my memory in 1962, when I saw a copy that Mr. Margolius had found in his files.

Q. Now, did there come a time that you sought out sites for other locations? A. Yes, sir.

Q. Now, will you tell us what you did in that respect? A. In the spring of 1960 we were building the Holiday Inn at Shirley Highway and Glebe Road. We had agreed to start with 106 rooms, although the site was capable of sustaining and zoning had been granted for more rooms. Mr. Perper and Mrs. Perper had been in Florida, Miami Beach, Florida. They returned in the spring. Mr. Perper told me that he thought that a Holiday Inn in the vicinity of Catholic University and the Shrine of the Immaculate Conception would be an excellent location for a Holiday Inn and he asked me to see if I could find a tract of land upon which one could be built.

[372] Q. Did you research that problem? A. I did, sir. I spent several days scouring the area, starting at North Capitol Street and Michigan Avenue and going the full length of Michigan Avenue and into the side streets for a short distance from Michigan Avenue, all the way to the end of Michigan Avenue at the Queenstown Shopping Center, I believe it is called.

Q. Did you discuss any of the sites that you had found with Mr. Perper? A. I mentioned that I had found one or two sites, but I felt that they were not attractive, and we went no further with it.

Q. Did you ever at any time discuss any other sites with him? A. Are you asking generally or in the Washington metropolitan area?

Q. Generally or the Washington metropolitan area. A. In the Washington metropolitan area I do not recall that I discussed any other sites. In general, outside of the bounds, we went to look at a site at Warrenton, Virginia.

Q. Now, during this period was your relationship with Frank Perper unfriendly or friendly? [373] A. I would say friendly, sir.

Q. Did you have any problems of any moment? A. In the building of a motel you live with problems from day to day, sir, but as far as problems with Mr. Perper at this time, I would say no.

Q. Now, did there come a time when you learned that Mr. Perper was beginning or planning to build a motel in the Washington area? A. Yes, sir.

Q. And how did you learn about it? A. The business that I am in is a close-knit business, there is a very active grapevine in it. We hear, many times, of things that are under discussion long before they reach fruition. I heard by the grapevine there was a Holiday Inn to be constructed by Frank Perper at the site in the vicinity of the Catholic University and the Shrine of the Immaculate Conception.

Q. Now, did you talk to Perper about it? A. No, sir.

Q. Was there some reason why you didn't talk to him? A. Yes, sir. there was.

Q. Would you tell us what it was? [374] A. At the time that this came to my attention—

* * *

THE WITNESS: Yes, there was, Mr. Friedlander. I had come to know Mr. Perper as an extremely arbitrary, capricious individual, of whom such a demand would [375] have had no fruit or value.

THE COURT: We are going to take our luncheon recess at this time. We will take a somewhat longer recess than we do ordinarily. We will recess until 2:15.

* * *

Q. You had answered a question pertaining to the reason why you did not contact Frank Perper. Have you completed your answer? A. No, I have not, sir. When it came to my attention that Mr. Perper was going into a site at Catholic University at the Shrine of the Immaculate Conception I considered what steps should I take to obtain the rights which I felt inured to me under our joint venture agreement in Richmond. I called Mr. Margolius and asked

him whether my [376] understanding of our joint venture agreement was right and proper, that we were all jointly to develop the Washington area, and he informed me that my understanding—

MR. GALIHER: I object to anything that Mr. Margolius said to this gentleman.

THE COURT: Objection sustained.

BY MR. FRIEDLANDER:

Q. As a result of what he told you what did you do? A. I considered further what action I should take. Mr. Perper had gone off on his own, apart from the joint venture, to obtain a site and develop it. I felt that the right to do similarly also inured to me and that if I found a site which was fit and proper for a Holiday Inn to be built upon, I would apply and should be able to obtain a franchise for the development of that site for a Holiday Inn.

Q. The situation was then created, as a result of which you went out and looked for a site? A. That is right, sir.

Q. And did you find one? A. Subsequently Mr. Weiss and I found a site.

Q. What did you do after you found the site? A. The site involved the assembly of eight pieces of land, which took quite some time. After we assembled the site [377] we waited until Mr. Kemmons Wilson, the Chairman of the Board of Holiday Inns, was going to be in Washington and took him personally and physically to examine the site which we had found upon Washington-Baltimore Parkway. He looked at the site and found it very pleasing—

MR. GALIHER: I object to anything Mr. Wilson found, Your Honor.

THE COURT: Objection sustained.

BY MR. FRIEDLANDER:

Q. As a result of your conversations with Mr. Wilson at the site what did you do? A. We submitted an application for a Holiday Inn franchise for this site.

THE COURT: Did you invite Mr. Perper to join you in the enterprise?

THE WITNESS: No, sir.

Q. Now, did you thereafter receive any information, you or Mr. Weiss, concerning the franchise which you had submitted? A. Yes, I did.

Q. I show you Plaintiffs' Exhibit 15 and Plaintiffs' 16 and ask you if you are familiar with those two documents? A. Yes, I am, sir.

[378] Q. I note that Plaintiffs' Exhibit 15 is a letter addressed to Robert Weiss written by the Assistant Vice-President of the Holiday Inns of America and in part it says:

"As I mentioned to you over the phone, we are committed for the Washington area. However, we would like to review your property. If we are in a position to work something out we will notify you to that effect."

Did you have a telephone conversation with Mr. Mann? A. Yes, I did, sir.

THE COURT: With Mr. who?

MR. FRIEDLANDER: Mann, M-a-n-n. He was Assistant Vice-President of Holiday Inns of America.

BY MR. FRIEDLANDER:

Q. Now, did you learn from him to whom the area was committed? A. Yes, I did, sir.

Q. Now, as a result of reading Plaintiffs' Exhibit 16, dated August 17, 1961—and I show you this document which I have shown you before—did that letter give you the information to whom they claimed the area was committed? A. Yes, it does, sir.

Q. And to whom was the area committed? [379] A. Mr. Frank Perper.

Q. Now, an inquiry has been made of you as to whether or not you offered participation to Frank Perper in this new site. I think you answered you did not. A. That is right, sir.

Q. Would you care to state why you did not? A. Yes.

MR. GALIHER: I object to that, Your Honor.

THE COURT: Objection overruled.

THE WITNESS: Mr. Perper had elected to go on his own and find a site and not invite me and the other mem-

bers of the joint venture to participate. We felt that we, having equal rights within the joint venture to develop the Washington area, had equal rights to find a site which would be suitable for a Holiday Inn and would have equal rights to obtain franchises for that site or such site from the Holiday Inns of America, each of us acting independently on our own, as Mr. Perper had done.

THE COURT: Let me ask you this question. You claimed that you were entitled to participate in all ventures that Mr. Perper had in this area in the way of Holiday Inns, is that correct?

THE WITNESS: That is right, sir.

[380] THE COURT: And that Mr. Perper was entitled to participate with you?

THE WITNESS: We had a joint venture which—

THE COURT: Exactly, You had a joint venture. You felt, did you, that Mr. Perper had broken the contract?

THE WITNESS: That is right, sir.

THE COURT: And you felt that that gave you the privilege of likewise breaking the contract, is that it?

THE WITNESS: I felt that this gave us the right to find our own sites and develop them on our own.

THE COURT: Very well.

BY MR. FRIEDLANDER:

Q. Now, did you ever at any time refuse any request from Mr. Perper to throw all the ventures in together?

A. No, sir.

MR. GALIHER: I object to that, Your Honor.

THE COURT: You have a right to ask him whether he ever had a request. You said whether he refused a request.

MR. FRIEDLANDER: That was the next question. I was doing it backwards. I'm sorry.

Q. Did you get a request from Mr. Perper? A. No, sir.

Q. As a matter of fact, your joint venture was limited [381] to Holiday Inns of America, was it not? A. The joint venture formed in Richmond was limited to Holiday Inns of America, sir.

Q. And did you ever have any franchise involving a Holiday Inn of America? A. No, sir.

Q. Now, is your complaint the fact that you were prevented from obtaining such franchises? A. That is right, sir.

MR. GALIHER: I object to what his complaint is, Your Honor.

MR. FRIEDLANDER: Well, that is his complaint.

THE COURT: Objection overruled.

BY MR. FRIEDLANDER:

Q. In other words, before you filed this present suit in November of 1962 did anything, items occur which put you in a position of forcing your hand to sue? A. Yes, sir; there were a series of several items. I will attempt to give them to you chronologically. We had already gone through the point where Mr. Perper departed from the joint venture and took unto himself the franchise area rights which we felt belonged to the joint venture and prevented me and Mr. Weiss from obtaining a [382] franchise for a Holiday Inn. At this time I did not have anything in writing which substantiated the joint venture which had been reached in Richmond.

As a real estate man I am accustomed to conducting all phases of real estate transactions—

THE COURT: I think he is going way beyond the confines of the question.

MR. GALIHER: Your Honor, may I move to strike the question as containing nothing but conclusions and not facts—the answer.

THE COURT: I will let it stand. But I think we are not interested in what his custom is or what his practice is.

THE WITNESS: Let me make my answer more responsive.

THE COURT: Just a moment. The Court is addressing counsel.

THE WITNESS: I beg your pardon.

THE COURT: I am not going to permit him to make a stump speech in answer to your question.

BY MR. FRIEDLANDER:

Q. You had mentioned that fact you had nothing in writing? A. That is right, sir.

[383] Q. How did that affect your position, did you think? A. I thought that in order to prove a partnership—

MR. GALIHER: If Your Honor please, he is now asking for a legal opinion as to how that affected his position.

THE COURT: Objection sustained.

BY MR. FRIEDLANDER:

Q. Now, as a result of your consideration of all the factors did you determine at any particular time to bring suit? And if you did decide to bring suit, tell us the factors that led up to that. The facts, not your opinion, nor your background; just the facts. A. Yes, sir. In June of 1962 I received a call from the lessee—

MR. GALIHER: I object to this, Your Honor.

THE COURT: Will you read the question?

(The Reporter read the last question.)

THE COURT: I am going to sustain the objection to that.

MR. FRIEDLANDER: These were marked prior to this time. May we retain the same numbers?

THE COURT: I have allowed some of this on the ground that there is a question of laches in the case and he is entitled to explain reasons for an apparent delay, and also I [384] have allowed this in order to give him an opportunity to explain what appears to be inconsistency in his attitude. But beyond that, Mr. Friedlander, I think we should not go.

THE DEPUTY CLERK: Plaintiffs' Exhibits Nos. 25, 26 and 27 marked for identification.

(Documents marked Plaintiffs' Exhibits
Nos. 25, 26, 27 for identification.)

BY MR. FRIEDLANDER:

Q. I hand you Plaintiffs' Exhibits for identification numbered 17, 19, 25, 26 and 27.

Will you look at No. 17 first and tell us whether it came to your attention? A. What was the question, sir?

Q. Did that document ever come to your attention? A. Yes, it did, sir.

Q. And who gave it to you or showed it to you? A. The inkeeper at the Holiday Inn at Shirley Highway and Glebe Road and our lessee at that Holiday Inn.

Q. Now, did this paper or letter, was this one of the inducements for bringing suit?

THE COURT: Now I am going to exclude any evidence as to inducements for bringing the suit. That doesn't make any difference. You have a right to explain why he delayed so [385] long in bringing the suit, but as to what led him to bring the suit, that is a different matter.

MR. FRIEDLANDER: May we offer in evidence on this score Exhibits 17, 19, 25, 26 and 27.

MR. GALIHER: Your Honor, it is my understanding that all of these exhibits are already in evidence.

MR. FRIEDLANDER: No, they are not.

MR. FOREMAN: If Your Honor please, these were proffered and Your Honor refused to admit two of these into evidence. I don't see any change in the circumstances since the time Your Honor so ruled.

Plaintiffs' Exhibit No. 17 for identification was submitted for introduction. You denied its admission.

THE COURT: What about it?

MR. FOREMAN: We object to its being admitted.

THE COURT: That is different. The fact that I excluded it yesterday doesn't mean it is inadmissible today.

You object to it? On what ground?

MR. FOREMAN: It is irrelevant, if Your Honor please. The question asked by Mr. Friedlander of the witness—

THE COURT: Just tell me—

MR. FOREMAN: It is not material.

THE COURT: I am going to sustain the objection. This is just a question of advertising the merits of a [386] particular inn.

MR. FRIEDLANDER: Could I address myself to the admissibility of this?

THE COURT: Yes.

MR. FRIEDLANDER: I am speaking now of document 17. No. 17 is a letter from Frank—

THE COURT: I know what it is. Tell me why it is admissible.

MR. FRIEDLANDER: Because it indicates an attempt to destroy or injure the joint venture hotel at Glebe Road. He is attempting to divert business from there.

THE COURT: It seems to me that that makes it all the more irrelevant.

Objection sustained.

MR. FRIEDLANDER: The same reason for 19.

THE COURT: Gentlemen, we must not depart from the issue of this case, and there is only one issue in this case, and that it was there a binding agreement made in Richmond on the 26th of April 1959 to create this alleged joint venture, and anything else is irrelevant.

MR. GALIHER: I believe that is likewise true of those three documents.

MR. FRIEDLANDER: I think in view of the Court's [387] ruling, I think it does apply to all five.

THE COURT: Very well.

MR. FRIEDLANDER: We don't change our mind, but we bow to the wishes of the Court.

BY MR. FRIEDLANDER:

Q. Now, I think you were attempting, before I interrupted you with these documents, to give us the basis of the situation. After you had acquired the site I understand that you did apply for a Holiday Inn franchise? A. That is right, sir.

Q. And you did not receive that? A. That is right, sir.

Q. At the present moment you have no Holiday Inn franchise? A. Other than participation in the one at Shirley-Glebe, I do not, sir.

Q. And does Mr. Weiss have any Holiday Inn franchise or participate in any, except Glebe Road and Shirley? A. To my knowledge, no, sir.

Q. Have you ever discussed this matter with Frank Perper? A. I don't believe I have, sir.

[388] Q. Was there any additional reason, other than you have already given us, why you did not discuss it with him at any time. A. Yes, sir. I felt that the temperament of the man, his actions, were such that it would have been a fruitless, useless request to make of him, would have brought me nothing but laughter.

* * *

CROSS-EXAMINATION

BY MR. HILLAND:

Q. Mr. Finkelstein, when you say "we" filed an application with Holiday Inns of America, Inc., for a franchise for a site on the Washington-Baltimore Boulevard, to whom do you refer when you use the plural we? A. Mr. Robert Weiss, myself, Norman Shapiro our lessee on the Shirley Highway-Glebe Road Holiday Inn, a Mr. Russell Wein, and a Mr. Charles Luria.

Q. Did it include the defendants Bernard Margolius [389] and Ralph Deckelbaum? A. No, sir.

Q. They did not participate in that application in any manner, did they? A. Not to my knowledge, sir.

Q. So far as you know they didn't even know about it? A. Not to my knowledge, sir.

MR. HILLAND: That is all.

THE COURT: Gentlemen, the evidence isn't quite clear, perhaps one of you can enlighten me, was the Holiday Inn on the Washington-Baltimore Parkway ever constructed and put into operation?

MR. FRIEDLANDER: There was never a Holiday Inn at that site.

THE COURT: I see. Very well.

BY MR. GALIHER:

Q. But on that site, Mr. Finkelstein, there was constructed a Holiday Inn—pardon me—a Howard Johnson Motel and Restaurant? A. That is right.

Q. Which is still operating to this day? A. To the best of my knowledge, yes, sir.

Q. You did not invite Mr. Broidie to participate with [390] you when you applied for the franchise at Holiday Inns for the site at Baltimore-Washington Parkway, did you? A. No, sir.

Q. Had you ever been in the motel or hotel business before the application was made for the license at the Shirley Highway and Glebe Road site? A. No, sir.

Q. You had been in a number of other business, had you not, Mr. Finkelstein? A. Yes, sir.

Q. And you were a part of a corporation which was building homes in Arlington, Virginia, and which included the other three gentlemen who are plaintiffs in this case? A. Yes sir.

Q. What other business interest did you have in 1959 besides the interests in connection with the building of homes and the interest dealing with the construction of Shirley Highway and Glebe Road. A. I had a very active real estate brokerage business, sir.

Q. And you were always accustomed, were you not, whenever you entered into an agreement, to make certain that it would be reduced in writing so that there would be no [391] question about the terms and conditions agreed to? A. No, sir.

Q. You were familiar, were you not, with the fact that real estate contracts would have to be in writing? A. Yes sir.

Q. Had you ever studied law? A. I studied one semester at National University, sir.

Q. And when did you study? A. This would be sometime in the middle 1930s.

Q. How long had you been in the real estate business prior to 1959? A. Approximately nine years.

Q. Was any memorandum ever made concerning the agreement which you have testified to was entered into in Richmond, Virginia, on April 26, 1959. A. I made no such such memorandum, sir. I don't know if anyone else did.

Q. You do not know of the existence of any memorandum or agreement pertaining to the meeting which took place at Shirley Highway and Glebe Road—pardon me—at Richmond, Virginia, concerning Shirley Highway and Glebe Road? A. I know of no such memorandum, sir.

Q. You have testified concerning your inability to [392] get along with Mr. Perper and— A. I don't recall I ever testified to that, sir.

Q. Didn't you testify he was arbitrary, he was capricious? A. That didn't mean that I didn't get along with him, sir. Those are character traits which I stated to.

Q. Didn't you have some arguments with Mr. Perper from time to time? A. There were discussions, sir.

Q. Did you ever order him off the Shirley-Glebe site or suggest that maybe he should leave? A. No, sir. He was as much an owner as I was. How could I order him off?

Q. Did you ever say anything to him when Mrs. Perper might have been with him which might indicate that you didn't feel that his presence was desired over there? A. I don't believe I ever did, sir.

Q. Well, then, if you didn't mean to convey the impression that you didn't get along with Mr. Perper there was no reason in the world why you could not have sat down and talked to him about Catholic University, was there? A. Yes, there was, sir.

Q. Did you ever make the attempt? [393] A. No, sir.

Q. When did you first find out that Mr. Perper was interested in the construction of a motel at Catholic University? A. My best recollection would place it in the very late part of 1960 or the very early part of 1961.

Q. How did this come to your attention? A. As I have stated previously, the real estate business is a close-knit business with a very fine and active grapevine.

Q. Mr. Finkelstein, did you ever go to the office of Mr. Julian Savage on 15th Street? A. Yes, sir.

Q. How many times did you go to Mr. Savage's office? A. I could not say, sir. I did not keep count.

Q. Did you ever go to the office of Mr. Savage and Mr. Perper at the Universal Building at Florida Avenue and Connecticut Avenue? A. Yes, sir.

Q. How many times did you go there? A. I could not say, sir.

Q. Have you ever been to the office of Mr. Perper and Mr. Savage which is presently located in Roslyn, Virginia, at the site of a motel? [394] A. Yes, sir.

Q. How many times have you been there? A. There I can be more specific. I would say two or three times at most, sir.

Q. There has been a continuing necessity on your part to call at the office of Mr. Savage and Mr. Perper for the purpose of signing checks to the investors and the promoters of the Shirley Highway-Glebe Road enterprise, has there not? A. That is not quite exact, sir. Either Mr. Weiss or I go there to sign checks. There is no demand that I alone do it.

Q. Well, either you or Mr. Weiss, then, have been going to the office of Mr. Savage or the office of Mr. Savage and Mr. Perper ever since Shirley Highway and Glebe Road was constructed? A. I would say that I go to the office of Mr. Savage. He is the accountant for the joint venture, his staff prepares the checks, they call either me or Mr. Weiss when the checks are ready for signature, and either Mr. Weiss or I go there.

Q. Isn't it a fact that you knew that, particularly at the Universal Building at Florida Avenue and Connecticut Avenue that in addition to being Mr. Savage's office that was Mr. Perper's office? [395] A. Yes, sir.

Q. And didn't you see Mr. Perper there on occasions when you went there? A. Very rarely, sir.

Q. But you did see him, did you not, Mr. Finkelstein? A. Once or twice when I entered the offices I saw Mr. Perper sitting behind his desk. My business was connected with signing the checks, which was conducted in a different part of the office.

Q. Did you ever see Mrs. Perper, now Mrs. Sahm, there? A. I don't recall whether I did or not, sir.

Q. Did you ever see Mr. Harold Perper there? A. Until the beginning of this trial I did not recall ever seeing Mr. Harold Perper.

Q. But now that the trial has begun do you now recall that you saw him at the office? A. I do not, sir. I have a bad memory for names and faces. I recognize the gentleman—or rather I asked to have him pointed out to me. I do not recall whether I saw him at the offices of Mr. Savage.

Q. Now, these visits to the office at the Universal Building at Connecticut Avenue and Florida Avenue took place, did they not, after you had learned about Catholic University [396] Motel being started? A. Yes, sir.

Q. And they also continued after you learned that the motel at 17th and Rhode Island Avenue had been started or constructed, did they not? A. Yes, sir.

Q. On no occasion, then did you ever seek to discuss what you felt amounted to a breach of contract with either Mr. Perper or Mr. Savage, did you, Mr. Finkelstein? A. That is right, sir.

Q. Did you invite Mr. Broidie to participate with you in the venture which started with the application for a Holiday Inn franchise at Baltimore-Washington Parkway? A. No, sir.

Q. Did you invite Mr. Broidie to participate with you in the franchise and in the construction of the Howard Johnson franchise now operating on that site? A. No, sir.

Q. Do you have an interest in, either directly or indirectly, in any other motels, Mr. Finkelstein? A. Yes, sir.

Q. Where are they located? A. The question of interest I will have to explain. [397] I have taken back secondary financing on land on which a Howard Johnson is presently being constructed. I have a note which was taken back in the course of a brokerage transaction on a piece of land on which a Remada Inn is being constructed. Those are the extent of my interests.

Q. Where are they located? A. The Remada Inn is being constructed in, I believe, the 1600 block of New York Avenue, Northeast.

Q. And where is the other piece of property? A. The Howard Johnson is being constructed on U.S. 1 at the intersection with the Capitol Beltway in Fairfax, County, Virginia.

Q. Is that the one that Mr. Weiss made reference to yesterday that he is interested in? A. Yes, sir.

Q. Now, Mr. Finkelstein, did you attend the various meetings that were held starting with the one in Richmond, Virginia, in connection with Shirley Highway and Glebe Road? A. I am sure that I did not attend all of the meetings, sir. I attended a substantial number of them. I don't believe anyone attended all of the meetings.

[398] Q. Did you examine the various agreements that were prepared with respect to that venture which have been introduced into evidence here? A. I would have to have those documents shown to me, sir.

Q. Showing you first Plaintiffs' Exhibit No. 7, are you familiar with that document? A. I don't know, sir. I was looking for the signature page to see if there was a signautre attached to it and I see none, so that I cannot say whether I ever examined this document or not.

Q. You are familiar with the fact that that document provided that the franchise was to be in the name of Mr. Frank Perper, the first one, are you not? A. I have just stated I don't recall whether I ever examined the document or not. I would have to read it in order to answer your question, sir.

Q. Would you please look at the first page of it?
(Pause)

A. What is the question sir?

Q. Are you aware of the fact that that made reference to the franchise being in the name of Mr. Frank Perper?

A. The document has the name of Frank M. Perper [399] type in, it is scratched out and in shorthand something has been changed or added to it. I can't tell what has been

added, sir. But the typewritten portion of it originally had the name of Frank M. Perper on there.

Q. Now would you look at Plaintiffs' Exhibit No. 8 and tell me if you have ever seen that one before?

(Pause)

A. I would have to give you the same answer, sir. I do not recall whether I have seen it or not.

Q. Who was assigned the task of doing the legal work for the Shirley Highway-Glebe Road operation? A. We considered Mr. Bernard Margolius as general counsel. His office was handling the legal work.

Q. Now, at that time can you tell us the location of his office with respect to an office that you had? A. They were about a block apart, sir.

Q. Did there come a time when you had offices in the same building? A. No, sir.

Q. I have just handed you No. 10, which represents the final agreement. Will you look on there and see if your name is attached? A. My name appears in typewriting on the first page. [400] My name appears on page 15 as a signature.

Q. Now, you read that agreement before you signed it?

A. I would assume I did, sir, if I signed it.

Q. And isn't it a fact that there were a number of discussions about the agreement before the final draft was signed, as reflected by the changes on the other copies which have been shown to you? A. I am not sure that I quite follow the question sir. There must have been discussions somewhere because I see three different drafts and obviously there would have been a reason why that many drafts were made.

Q. Well, weren't you present at the discussions respecting what language and terms and conditions were to be put into the draft of your joint venture? A. Not unless it was at a general meeting or if I was asked to do so specifically.

Q. Well, didn't you tell us that you had attended a number of meetings? A. That is right, sir.

Q. Mr. Finkelstein, prior to the institution of this

suite, you have known, in addition to Catholic University, about the construction or the imminent construction of a motel at 17th and Rhode Island Avenue, had you not? [401]

A. Yes, sir.

Q. As a matter of fact, you also knew of the imminency of the construction of a motel in Roslyn, didn't you?

A. Yes, sir.

Q. And in your complaint you also made reference to a motel which was to be constructed at Dulles International Airport, did you not? A. Yes, sir.

Q. At no time prior to the institution of this suit in November of 1962 did you ever contact Mr. Frank Perper or any of the other defendants, with the exception of Mr. Bernard Margolius, did you? A. That is right, sir.

* * *

REDIRECT EXAMINATION

BY MR. FRIEDLANDER:

Q. The visits to Mr. Savage's office when he was by himself or in the same office with Mr. Frank Perper, they [402] occurred prior to the time of filing suit and after you filed suit? A. That is right, sir.

Q. And the suit was filed in about November 1962? A. That is right, sir.

Q. And from that date to this date you have still signed the checks in Mr. Savage's office? A. Either Mr. Weiss or I, sir.

Q. Now, you mentioned two motels in which you had an interest which apparently was an interest relating to a note you held? A. It was a brokerage interest mostly, sir.

Q. It was not an operating interest? A. No, sir.

Q. Do you at the present time operate any motels?
A. No, sir.

* * *

[423] MR. HILLAND: If Your Honor please, I offer in evidence what has been marked for identification as

Plaintiffs' Exhibit No. 28, which is the joint venture agreement relating to the Holiday Inn Motel near Catholic University, to which the defendant Frank Perper and Martin Perper are parties.

Now, I offer that, Your Honor, for the purpose of [424] showing when the breach of contract and the breach of trust occurred in this case.

THE COURT: Let it be admitted.

* * *

MR. HILLAND: I offer in evidence what has been marked for identification as Plaintiffs' Exhibit No. 29, which is a letter dated September 30, 1958 from Charles M. Collins, Vice-President and General Counsel of Holiday Inns of America, Inc., and specifically the last two sentences in the first paragraph, which states that Holiday Inns of America, Inc., never sets aside, holds or promises to reserve any locations for anyone. Until an application is approved for a territory there are no reserved areas held for anyone.

I offer that to contradict the testimony of Mr. Perper on page 204 of his deposition which Your Honor just read.

THE COURT: Let it be admitted.

* * *

[425] RALPH H. DECKELBAUM

* * *

DIRECT EXAMINATION

BY MR. HILLAND:

Q. Will you please state your name? A. Ralph H. Deckelbaum.

* * *

Q. What is your occupation? A. Attorney.

Q. Are you a member of the Bar of this Court? A. Yes, I am.

[426] Q. For how long have you been? A. Admitted to practice October 1952.

Q. And for how long have you been engaged in practice? A. In October 1952 I went on active duty with the Air Force, where I served for approximately nine months and then I returned and have been in active practice in the District of Columbia and also in the State of Virginia since that time.

Q. Are you associated with any other lawyer? A. Bernard Margolius.

Q. For how long have you been so associated? A. I worked for him before I passed the bar as a law clerk and have been with him continuously except for the time that I was in the Air Force.

Q. Were you with him — strike that. Did you go to Richmond on the occasion of this meeting about which there has been testimony in April 1959? A. Yes, sir.

Q. With whom did you go? A. Messrs. Weiss, Broidie, Stolar and Finkelstein.

Q. Did you go down to Richmond that day for the specific purpose of that meeting or for some other purpose? A. Other purpose.

[427] Q. And what was the other purpose? A. Richmond — the Holiday Inn in Richmond, what is known as the Holiday Inn of Richmond No. 1, was in the process of having some new rooms built and also some new general public space built, and I went down to work on the contract with respect to that.

Q. Did you participate to any extent in the conferences which occurred at that time and place? A. You mean the conferences between —

Q. Among the plaintiffs and Mr. Margolius and Mr. Frank Perper. A. I may have been there for a very short period of time.

Q. And at what places in Richmond Holiday Inn Motel No. 1 did you participate? A. They were meeting

both in the restaurant and around the pool area, and I walked up to the meetings on several occasions and stayed there for a few minutes and then walked away and went back to what I was doing.

Q. Can you relate what fragments of the conversation you heard? A. I remember when the site at Shirley Highway and Glebe Road was mentioned to Mr. Perper he indicated that he [428] was very familiar with the site as he had previously tried to acquire it but had been unsuccessful because he could not get all the heirs together. It was a site that had a number of heirs involved in the property. He was very familiar with the general area.

Q. What other conversation did you hear? A. There was a lot of general conversation. The only other conversation I heard was general conversation pertaining to Holiday Inns in general, how they operate and so forth.

Q. Do you remember how long their conferences lasted? A. I would say several hours, two or three hours.

Q. And of those two or three hours, how much time were you among those who were conferring? A. Less than half. I would say probably a quarter of the time.

Q. And with whom did you return from Richmond to Washington? A. Either Mr. Margolius or Mr. Perper.

Q. Now, during your return to Washington did you learn what, if any, agreements had been reached at Richmond in that conference? A. Yes.

Q. What did you learn? [429] A. I learned that —
MR. GALIHER: I object to that, Your Honor.

THE COURT: Objection sustained.

BY MR. HILLAND:

Q. You don't know whether you learned it from Mr. Margolius or Mr. Perper? A. No, sir, I cannot separate and determine which one of the two gentlemen brought me back from Richmond.

Q. Was that the first time you learned of what, if

any, agreements were reached down there? A. Yes, sir.

Q. Now, the following Saturday did you attend a conference among the members of the same group? A. I was present during about half of a conference between members of the same group.

Q. And where was that conference? A. In Mr. Margolius' office in the Wire Building at 1000 Vermont Avenue, Northwest, here in Washington.

Q. And what day of the week was it? A. Saturday.

Q. Saturday following the Sunday conference in Richmond, was it? A. This is my recollection, yes, sir.

[430] Q. Now, on that occasion how long did this conference last? A. I would say approximately three to four hours.

Q. Did you participate throughout that entire three or four hours? A. No, sir.

Q. To what extent did you participate personally? A. I would say I was in there approximately half of the time in the conference which was in Mr. Margolius' office, about half of the time.

Q. And can you explain why you were not there during the entire time? A. Well, I was in there mostly or totally, as far as the conference was concerned, listening. During the morning I received several phone calls which I went into my office, which was next to Mr. Margolius', to answer; and in addition to that, as I recall it, I had some court work pending the next week and I probably went in to line my schedule up for the next week as far as court and legal work was concerned.

Q. And what conversation did you hear that morning while you were there? Or that day; not that morning. A. Well, they discussed the fact — Mr. Perper stated that he had been in touch with Memphis and that the franchise [431] for the site at Shirley Highway and Glebe Road could be obtained. There was discussion about how much the site or how much a motel there would yield as far as investors were concerned, how much it would cost. There was discussion — they had a plat there, I believe,

and they were trying to determine the general layout of the motel. There was general discussion amongst Mr. Perper, Mr. Savage and everyone there with respect to their arrangement for their venture with respect to this franchise and with respect to the development of the other motels in the Washington area.

Q. And what was the arrangement you heard discussed?

A. Mr. Margolius and Mr. Perper were to have one-half interest —

THE COURT: I think you ought to tell us who said what, as far as you can remember, of course.

THE WITNESS: Judge, I couldn't pin down at this stage exactly who said this. This was discussed amongst themselves and everybody was talking from time to time.

THE COURT: Very well, you may proceed.

THE WITNESS: Mr. Margolius and Mr. Perper were to have a one-half interest in a joint venture. Messrs. Finkelstein, [432] Weiss, Broidie and Stolar were to have one-half an interest. They were to seek outside investment capital from what is known as investors in each motel that they were going to go into, and whatever amount of percentage of interest they had to give up to attract or to acquire this investment capital was to be deducted from the whole and whatever remained was to be divided 50 per cent to Margolius, Mr. Margolius and Mr. Perper, and 50 per cent to the other four gentlemen who are the plaintiffs in this action.

THE COURT: Yes, but what was the joint venture, Mr. Deckelbaum?

THE WITNESS: They were to get this franchise for Shirley Highway and Glebe Road and by so doing would obtain an understanding or commitment for the Washington metropolitan area and they were to go out and seek other locations in the Washington metropolitan area for development of motels.

MR. GALIHER: Your Honor, I object to this answer and move that it be stricken, for this reason: Mr. Deckelbaum has said — might I have the answer read back?

THE COURT: Yes, indeed.

MR. GALIHER: So that I may address myself to it, if I may.

(The Reporter read the last answer.)

[433] MR. GALIHER: Now, the part I object to is the part where he says, after he says they were going to secure a franchise for the particular site, then he went on and said "any by so doing." That is the part. That is Mr. Deckelbaum's interpretation, I respectfully submit.

THE COURT: I am not so sure whether it is or not or whether he is just paraphrasing what was said. I think your objection really goes to the probative weight. I might say this, gentlemen. I notice that all this testimony right along on the part of all these witnesses, they all testified we reached an understanding that there was to be so and so. Well, the Court has to decide whether they reached an understanding. These are conclusions. Nodoby testified in detail as to who said what from which the Court can infer whether there was or was not an understanding. I suppose that is an inherent weakness due to lapse of time. Well, I am going to let this answer stand.

BY MR. HILLAND:

Q. Can you remember any further conversation at that meeting? A. There was conversation as to what was going to be done immediately in the next few weeks. I believe that it was [434] decided that some of the people were going to get the assignment of the option for the ground executed. There was some other discussion with respect to investors so that there would be no overlapping of investors, because many of these people in the conversation there indicated that they knew the same people who might be interested in becoming investors in the particular site on Glebe Road and Shirley Highway. And so there wouldn't be any dual effort these names mentioned and various people said, well, I will talk to him or I will talk to him. This type of conversation. Generally speaking, I believe this was the area of discussion.

Q. Now, did you subsequently attend other meetings of this same group? A. Yes, sir.

Q. Did you ever see the defendant Harold Perper there on any occasion? A. No, sir.

Q. Did you from time to time see the defendant Frank Perper? A. Yes, sir.

Q. At the meetings? [435] A. Yes, sir.

Q. Did you see and talk with him on other occasions other than the meetings? A. Yes, sir.

Q. Do you remember any occasions when he referred to this joint venture agreement in relation to the metropolitan area of Washington? To refresh your recollection, do you remember any conversation or communication from him in relation to the Krisch Holiday Inn? A. I don't remember any conversation. I remember some correspondence with respect to the Krisch —

Q. Is that the correspondence that is in evidence?
A. I believe it is, sir.

Q. And do you remember why he communicated that information to you and Mr. Margolius?

* * *

Q. Mr. Deckelbaum, I hand you what is marked Defendants' [436] Exhibit No. 7. Will you explain the reason that was sent to Harold Perper?

* * *

A. There were several changes in the original draft of the joint venture agreement which became obvious or were brought to my attention at the first meeting of the Shirley-Glebe joint venture.

* * *

THE WITNESS: Very well. Mr. Harold Perper was to be a named party in the joint venture agreement in place of Mr. Frank Perper, and I received a phone call from either Mr. Savage or Mr. Frank Perper asking me to send a copy of the draft of the joint venture agreement for Shirley-Glebe to Mr. [437] Harold Perper.

BY MR. HILLAND:

Q. Up to that time had Harold Perper personally had

any participation whatever in the joint venture relating to Shirley-Glebe? A. None, sir.

Q. Did you prepare all the drafts of the joint venture agreement relating to Shirley-Glebe? A. Yes, sir.

Q. From the first to the last? A. Yes, sir.

Q. Will you explain how the Shirley-Glebe organization was set up, how the title to the land was held? A. Title to the land was taken in the name of Messrs. Broidie and Weiss, and in the joint venture agreement they acknowledged that they held the ground for and on behalf of the joint venture.

Q. And how was — who was the manager of the organization of the joint venture? A. I am afraid I don't follow your question.

Q. Did anyone in particular become the manager or did they all manage by conference? A. Well, there were conferences. Mr. Frank Perper, [438] I guess, would be the leader of the meetings or conferences.

Q. Did there come a time when Frank Perper stopped speaking to you? A. Yes, sir.

Q. When was that? A. The best of my recollection, it would be in the early part of January of 1962.

Q. Now, up to that time, or did there come a time when he made any complaint about the legal work in your office? A. The first time that I recall any complaint about the legal work would have been in the spring or summer of 1960.

Q. Now, after that would he permit your office, that is, you and Mr. Margolius, to perform any services in connection with Holiday Inn motels? A. Some small amount was done, but at that time he began to prevent us from performing the legal work.

THE COURT: What was the time, Mr. Deckelbaum?

THE WITNESS: That would have been, I believe, starting in the summer of 1960 culminating in January of '62 when we were formally relieved of our obligation by letter.

* * *

[439] MR. HILLAND: May it please Your Honor, I offer in evidence what have been marked as Plaintiffs' Exhibits 30 and 31.

THE COURT: Let them be admitted.

* * *

BY MR. HILLAND:

Q. After receipt of that communication marked Plaintiffs' Exhibit No. 31 from Mr. Foreman who took over the work, legal work? A. Mr. Foreman, to my knowledge.

Q. Your office did not do any of it in connection with Richmond No. 1? A. No, sir.

Q. Now, did Mr. Foreman take over other legal work? [440] A. Yes, sir. He at that time was already performing the legal work for Richmond No. 2.

Q. Now, before Mr. Frank Perper stopped speaking to you did you ever have any conversation or conversations with him about the nature and extent of the relationship which existed between him and Mr. Margolius? A. Yes, sir.

Q. Do you remember when and where such conversations occurred? A. Well, it took place over a course of years. Mr. Frank Perper was a frequent visitor and client to our office. These conversations would take place either in the reception room. Frequently he would come to the office and Mr. Margolius would not be there, we would go to lunch together at the various restaurants in the area. They took place over several years and, as I say, he was a frequent person in attendance at the offices.

Q. And what did he say?

* * *

[441] Q. Well, over what period of time was he coming to the office? You said several years. A. Well, I would say, to my recollection, he might have been before there and probably was there before that, but he first started coming up to the office, to my recollection, about 1955 and continued coming up there until sometime in 1959.

Q. And when did you start having these frequent contacts with Mr. Frank Perper? A. I would say '56, between '56 and '59, 1956 and 1959.

Q. And these conversations you are about to relate occurred during that period? A. Yes, sir.

Q. And what did he say?

MR. GALIHER: Your Honor, I object to any conversations prior to 1959.

[442] THE COURT: It seems to me that the starting point of this ought to be April '59. How is it relevant to introduce any statements made by Mr. Perper prior to that time?

MR. HILLAND: Your Honor, Mr. Margolius has testified that as of the time of the Holiday Inn at Charlotte, North Carolina, Mr. Perper and he had an oral general partnership agreement under which they were to share on an equal basis in any motels that they developed, and this is corroborative of that.

THE COURT: It is my understanding what this suit is predicated on is an alleged oral agreement made on April 26, 1959, is it not?

MR. HILLAND: No, Your Honor, Mr. Margolius' case is predicated — it has two props. It not only has the one to which Your Honor referred, but it also refers or is based upon the oral general partnership agreement which existed between them from the time of the Holiday Inn —

THE COURT: I think I will take the evidence.

* * *

[443] A. Referring to Mr. Perper?

Q. Yes, about the nature and extent of the relationship that existed between him and Mr. Margolius.

* * *

A. He would say that he and Bernie, meaning Mr. Margolius, were partners, that whatever I go into Bernie goes into and whatever Bernie goes into I go into.

Q. Did Mr. Perper take Mr. Margolius into the Holiday Inn that he promoted at Winchester, Virginia? A. No, sir.

Q. Did he ever take him in? A. No, sir.

* * *

Q. Do you know of your personal knowledge how many Holiday Inn motels Mr. Frank Perper has promoted or participated in the promotion of since April 1959 up to the present time [444] in which Bernard Margolius has had no interest? A. Including or excluding the Washington metropolitan area?

Q. Excluding the metropolitan area, outside of Washington. A. I'd say 19 approximately, to my personal knowledge.

MR. HILLAND: Your witness.

MR. FRIEDLANDER: Could I ask one question?

MR. GALIHER: I wonder if I may have that last question and answer read back.

THE COURT: Yes.

(The Reporter read the last two questions and answers.)

MR. GALIHER: I object to that question and move that the answer be stricken because I think it's completely irrelevant and immaterial and obviously based upon hearsay information.

THE COURT: Mr. Hilland, you represent Mr. Margolius on his cross-claim.

MR. HILLAND: Yes, Your Honor.

THE COURT: Will you please state what the nature of the cross-claim is? I thought that the cross-claim was, in effect, the same as the claim of the plaintiffs. Now you said [445] something a few minutes ago which seemed to enlarge the cross-claim.

MR. HILLAND: I said the same thing, Your Honor, in my opening statement.

THE COURT: You did?

MR. HILLAND: Yes, Your Honor, I did, in my opening statement. Actually, we contended in our answer — rather, in our cross-claim, in our pretrial statement and in my opening statement to Your Honor, in effect, that Mr. Margolius' claim has three props, if I may call it that, three bases.

One is the oral general partnership agreement which Mr. Margolius testified about, which has existed since the Holiday Inn was built in Charlotte, North Carolina, and I can't quite remember that time. It was 1956. In addition to that, his claim is based upon the joint venture agreement that was reached in Richmond, Virginia in April 1959.

And it's also based upon the breach of trust of which the evidence shows Frank Perper is guilty, in that they were joint venturers for these two agreements I have stated, Your Honor, and for the further reason that the franchise for the Shirley-Glebe site was held in the name of Frank Perper, [446] although it was paid for —

THE COURT: Without getting into these details, I want to get —

MR. HILLAND: He held that in trust.

THE COURT: Can you pinpoint briefly what your contention is as to the agreement or agreements between Mr. Margolius and Mr. Perper?

MR. HILLAND: Well, the agreement at Charlotte was that from that time forward they would continue developing Holiday Inn motels and they would have an equal interest in them as promoters.

THE COURT: Very well. Now when do you claim such an agreement was made?

MR. HILLAND: In 1956.

THE COURT: Then you have the August 26, 1959 agreement.

MR. HILLAND: Yes, Your Honor.

THE COURT: Now anything else?

MR. HILLAND: Then our case is pitched upon the breach of those two agreements and upon the breach of trusts that are involved.

THE COURT: But that is the same thing. In other words, you claim two agreements?

[447] MR. HILLAND: Yes, Your Honor.

THE COURT: Very well. Now let me see what you said in your opening statement. You claim an agreement in Charlotte in 1956 and an agreement in Richmond on April 26, 1959?

MR. HILLAND: Yes, Your Honor.

THE COURT: Very well. I may have overlooked something. I was laboring under the impression that the claim of all the parties who made claims against Mr. Perper were based on the Richmond agreement. (Pause)

I have been going over the transcript of your opening statement and I certainly still construe it as basing your claim on the joint venture agreement of April 1959. In your opening statement you do say that they had been partners, but I don't construe your opening statement as contending that there was any agreement in Charlotte in '56 — you don't mention that — or that you claim there was any breach of the Charlotte agreement.

MR. HILLAND: Of course, I haven't read the transcript. My recollection is in the early part of my opening statement I stated to Your Honor that Mr. Margolius and Frank Perper had been partners in the motel business.

THE COURT: You did state that, but the way I [448] construed that was that was part of the background.

MR. HILLAND: Then I stated because of that relationship Mr. Margolius felt obligated to and did —

THE COURT: Yes, but there was nothing said that you are suing for breach of that earlier agreement.

MR. HILLAND: In our cross-claim, Your Honor —

THE COURT: Now let me look at the pretrial order.

MR. HILLAND: — and in our pretrial statement and also in a memorandum which I filed with the Pretrial Examiner —

THE COURT: I wouldn't be bound by that. There is a summary of the cross-claim in the pretrial order. This pretrial order is a very elaborate order and very thoroughly prepared.

MR. HILLAND: If I remember correctly, our additional basis for claim is near the end of it.

THE COURT: Well, you do say this: "The contentions of defendants Margolius and Deckelbaum are essentially the same as those of the plaintiffs, and in addition thereto defendant Margolius relies on the joint enterprise that

existed theretofore between him and the defendant Frank Perper, and defendants Margolius [449] and Deckelbaum both rely on the fact that pursuant to the joint enterprise between the plaintiffs, defendant Frank Perper and defendant Margolius the first Holiday Inn in the metropolitan Washington area, namely, the one at Glebe Road, was acquired for and on behalf of the joint enterprise in the name of Frank Perper."

You certainly don't make it clear in the pretrial order that you are claiming anything except the proportionate interests in the Holiday Inns in the Washington metropolitan area.

MR. HILLAND: That is right; that is all we do claim.

THE COURT: Oh.

MR. HILLAND: Yes, Your Honor. I am not claiming in these 19 motels he just —

THE COURT: Then how is all that relevant?

MR. HILLAND: It's relevant because Mr. Margolius' claim has, as I indicated, two props. Your Honor could find against the plaintiffs and still —

THE COURT: Very well, with that limitation I will allow the answer. I thought you were trying to enlarge the scope of the claim.

[450] MR. HILLAND: No, Your Honor.

THE COURT: Very well, I will allow the answer. I will overrule the objection. Now have you got the question or would you like to have it read?

THE WITNESS: I believe, Your Honor, I answered the question and there was an objection, a motion to strike by Mr. Galihier afterwards.

THE COURT: Yes, that is correct.

MR. HILLAND: There is one question I overlooked, Your Honor.

BY MR. HILLAND:

Q. Mr. Deckelbaum, I hand you what has been marked as Defendants' Exhibit No. 3, which is a telegram of June 14, 1959, I believe is the date on it. A. Yes, sir.

Q. Can you explain when and where you found —

strike that. Was it you personally who found that telegram? A. Yes, sir.

Q. When and where did you find it? A. I found it the early morning of the second day of this trial in the Richmond Motel file.

* * *

[451]

CROSS-EXAMINATION

BY MR. GALIHER:

Q. Mr. Deckelbaum, the day before yesterday when Mr. Margolius was on the stand he was requested to bring any and all documents, telegrams, memorandums, letters, in a period between April 1959 and June or July 1960. Can you tell me, please, if that material has been brought to court? A. Yes, sir, through and inclusive of June 30, 1960 was brought to court yesterday and I brought it again this morning.

Q. I wonder if I might see the material?

THE WITNESS: May I step down to the counsel table, Your Honor?

THE COURT: Yes, indeed.

(Pause.)

THE WITNESS: This is the material requested, Your [452] Honor.

MR. GALIHER: Your Honor, obviously it's going to take me a few minutes to go through that.

THE COURT: Well, we don't want to —

MR. GALIHER: Perhaps I might do that during luncheon.

THE COURT: I was going to suggest doing that during the noon recess. We don't want to consume time during court sessions for that. If you have anything else that you wish to examine Mr. Deckelbaum on you might proceed with that.

MR. CALIHER: All right, sir. I will be glad to do that.

BY MR. GALIHER:

Q. Mr. Deckelbaum — may I have those joint venture agreements, please? — I would like to show you Plain-

tiffs' Exhibits 7, 8, 9 and 10. Do I understand that you drew all of those? A. Yes, sir.

Q. What part, if any, did Mr. Margolius play in the preparation of any of these agreements? A. Very little, sir, except if there was some question with respect to terminology or something like that that I did [453] not feel that I was sure of the answer, I might have consulted him. I don't recall anything specifically, but this was the usual procedure. I would draw the agreement and if I had a problem after checking it, looking it up, or if it was a factual question, I might consult with Mr. Margolius on it.

Q. Well, did Mr. Margolius have any part to play in any of these, so far as you know? A. So far as — to the drafting of the agreements is concerned?

Q. Drafting of the agreements. A. Very minimal, as I say. I was primarily the one who was responsible for these agreements.

Q. And did he assign you to work with the members of the joint venture? A. Yes, sir.

Q. As a matter of fact, he took very little part in either the meetings or the preparation of any of the documents in connection with the joint venture? A. He took very little part with respect to the preparation of the documents. With respect to the meetings, he did take an active part.

Q. Did you likewise prepare Plaintiffs' Exhibit No. 14? A. Yes, sir.

[454] Q. Now, you made reference to the fact that Mr. Margolius had had interests in certain other motels that Mr. Perper had been interested in? A. Yes, sir.

Q. Did you draw any of those agreements? A. I drew the agreement for or worked with him, I didn't draw the agreement, I worked with him in the preparation of the agreement for Holiday Inn of Richmond No. 1. I worked with him in preparation of the agreement for Holiday Inn of Durham. To my recollection, those would be the only two that I worked on. There may have been others, but I don't recall them. If you name a specific motel I can tell you whether I did any work on it.

Q. Well, during the time you have been associated with Mr. Margolius is it not a fact that every business dealing that he had with Mr. Perper, to your knowledge, was incorporated in a particular document or agreement pertaining to the particular business dealing or venture?
A. No, sir.

Q. Can you produce any other documents? A. I believe your question was that everyone was in a document. I can't say that everyone was. There may have been agreements between them that are not in documents.

[455] Q. Well, do you have —

THE COURT: Mr. Margolius testified that he had a separate written agreement as to each separate venture.

MR. GALIHER: Yes, sir, that is what I was asking. Perhaps I didn't make it clear.

BY MR. GALIHER:

Q. Now, how long have you been associated with Mr. Margolius? Since 1951, was it, except for your military service? A. I first started working for Mr. Margolius in May or June of — in June of 1952. I worked for about four months and then I was away in the service for about nine months and came back in September of '53 and have been with him continuously since that time.

Q. And are you a partner of Mr. Margolius? A. No, sir.

Q. Are you — A. You mean in the law practice?

Q. Yes. A. No, sir.

Q. Are you a partner with him in connection with the operation of any motels? A. Yes, sir.

[456] Q. How many motels? A. I am a partner of his in Shirley-Glebe, in Richmond No. 1, Richmond No. 2, Durham, North Carolina. Incidentally, with respect to Durham, I am an investor as distinguished from any promoter's interest. I am a partner in Holiday Inn of Hampton-Newport News, Holiday Inn of Emporia, Virginia, Holiday of Elyria, Ohio, and Holiday Inn of Newbern, North Carolina.

Q. And these are all the subject of separate agreements? A. Yes, sir.

Q. You and Mr. Margolius have no general agreement which has been reduced to writing with respect to partnership in any motels, have you? A. No, sir.

Q. Did you ever look for this telegram before — A. Yes, sir.

Q. — two days ago? A. Yes, sir.

Q. And when did you first look for it? A. I personally, or someone in my office?

Q. Well, isn't it a fact that many, many months ago a request was made upon both you and Mr. Margolius for the production of that telegram? [457] A. May I explain this in a total fashion?

Q. Certainly. A. Request has been made for this telegram since, I believe, shortly after the taking of Mr. Margolius' deposition, which was the first time it was mentioned.

Q. That was in 1963? A. Yes, sir. Several times between then and the motion to produce certain documents I requested my secretary to look for a telegram sent to Mr. Perper signed by Mr. Walton, who is — all the indication was we were looking for a telegram signed by Mr. Walton. This telegram was never found. After the motion to produce, I looked through, personally looked through the Shirley-Glebe joint venture file, which consists of about two and a half times this amount of papers and files (indicating). I did not find it.

Shortly — not shortly. About October of last year or November of — excuse me — several months ago, I am not sure when, I asked my secretary to look through the other files that were active at the time, to see if perhaps that telegram had been misfiled. Once again she looked for a telegram signed by Mr. Walton, which was what we were looking for.

It was not until 6:30 the other morning that I was [458] going through the Richmond file when I found a telegram signed by Mr. Kemmons Wilson which contained the factual matter that we were looking for.

* * *

BY MR. GALIHER:

Q. Mr. Deckelbaum, you have told the Court concerning your recollection as to the agreement that was reached following the meeting in April between the plaintiffs and Mr. Perper and Mr. Savage, is that correct? A. With respect to the meeting on the Saturday morning, yes, sir.

Q. Was that agreement to develop the metropolitan area ever discussed after that Saturday morning? A. Not when everyone was together, but there were [459] various conversations from time to time about it.

Q. Was it ever discussed with Mr. Perper in your presence after that Saturday morning? A. Not that I can recall.

Q. And was there anything else about that agreement discussed or referred to on this Saturday morning that you have not told us about? A. It is very possible. I have tried to recall everything at the moment, but it's very possible that other things were discussed which I cannot recall at the present time.

Q. Did you read your deposition before you testified in this case? A. Yes, sir.

Q. And your testimony here today was like it was in the deposition with respect to the agreement, was it not? A. I believe they are substantially the same.

Q. And no where, Mr. Deckelbaum, either in your deposition or here today, did you ever mention any time limit being discussed on this Saturday morning for this agreement, did you? A. I am afraid I don't understand what you mean by time limit.

Q. You said that an agreement was entered into to [460] develop motels in this area as well as at Shirley-Glebe? A. Yes, sir.

Q. And at no time have you mentioned that the agreement had any time limitation in it? A. You mean when it was to be completed? I don't quite get the context of time limit.

Q. Anything about completion? A. They would under-

take the initial project immediately and then to pursue the others. There was no definite discussion about it.

Q. No definite discussion about time or anything else?

A. No, sir, not that I recall.

Q. And no definite discussion as to what any party was to do? A. Oh, yes, sir, there was that. I think I mentioned that on —

Q. Other than what you have said? A. I think I mentioned on my direct examination that there was discussion as to what the various parties' responsibility was to be.

Q. Now, you made reference to Mr. Perper and Mr. Margolius with respect to building other motels, before lunch also, did you not? [461] A. Yes, sir.

Q. I take it that there was no time mentioned as far as that was concerned? A. I am not trying to evade the question, but when you say time mentioned, I don't know what you mean. Do you mean with respect to each particular venture?

Q. Was any time mentioned as to when they were going to do anything with respect to any particular motel? A. They were proceeding as rapidly with respect to these motels and locations as they could find them.

Q. Well, was any time ever mentioned in their discussions that you heard? A. You mean as to an outside limit, as to when it would have to be done or anything?

Q. Or what was to be done on any particular occasion? A. No, they were proceeding at that time just going ahead as fast as they could go humanly possible.

Q. From April of 1959 how long was it before the Shirley-Highway-Glebe Road Motel was open for business? A. My recollection it opened in the summer of 1960, sometime in the latter part of July or early part of August.

Q. Then from the negotiations commencing in April of 1959 it took from that time until July, possibly August of 1960, [462] before it was opened? A. Yes, sir.

Q. Did there come a time, Mr. Deckelbaum, when you learned that a Holiday Inn franchise had been granted

in Alexandria, Virginia, to a gentleman by the name of Mr. Krisch? A. Yes, sir.

Q. Did you, yourself, do anything as far as objecting to that franchise? A. Personally, no, sir.

Q. But you knew steps were taken to object to it? A. Yes, sir.

Q. Now, was anyone, either on this side of the table, the plaintiffs, Mr. Margolius and yourself, or anyone on this side of the table, in any way connected with that franchise, so far as you know, or the operation of that motel? A. To my knowledge, no, sir.

Q. Now, I have looked through the papers that you were kind enough to turn over to me at lunch time and as you told me I could do, I took out certain of these papers to ask you about.

* * *

[463] Q. Would you examine this document, Defendants' Exhibit No. 8? (Pause.) A. Yes, sir.

Q. This was a letter sent out by you under Mr. Margolius' signature to Mr. Savage concerning documents which you had prepared which were to be executed by the promoters, is that correct? A. Yes, sir.

* * *

[465] Q. I would like to show you now Defendants' No. 9 for identification and ask you to examine that. (Pause.) A. I have so examined it.

Q. Did that have reference to Plaintiffs' Exhibit No. 10, the final draft of the joint venture agreement? A. Plaintiffs' Exhibit No. 10 is the agreement that [466] the people were requested to come in the office and sign.

Q. Well, does this letter make reference, then, to that agreement, send each one of them a copy of it? A. Yes, sir.

* * *

Q. Mr. Deckelbaum, isn't it a fact that some of the persons who executed that agreement did so in various places? [467] A. Yes, sir. I think the majority of them came in the office, but then there were several who were not in town and the agreement was sent to them to be executed.

Q. Will you examine Defendants' Exhibit for identification No. 10? (Pause.) A. I have so examined it.

Q. Did you prepare the original of that document?
A. Yes, sir.

Q. Which is designated certificate of partnership?
A. Yes, sir.

* * *

[469] Q. Now, Mr. Deckelbaum, may I show you, please, Defendants' for identification Nos. 10, 24 and 25, and ask you if those documents were prepared by you, or the original of two of them, which appear to be photostats? A. The original was prepared by me and the other two are photostats.

MR. GALIHER: Your Honor, I would like to introduce all three of these into evidence at the present time.

THE COURT: Very well, let them be admitted.

* * *

THE COURT: These are all letters to various [474] investors?

MR. GALIHER: Yes, sir.

THE COURT: You may proceed.

MR. GALIHER: * * * I would like to offer this into evidence as Defendants' Exhibit No. 23, Your Honor.

THE COURT: Let it be admitted.

* * *

MR. GALIHER: Pardon me. I didn't ask Mr. Deckelbaum what it was. May I do so?

MR. FRIEDLANDER: Well, there is no objection to it.

MR. GALIHER: I think it is self-explanatory.

THE WITNESS: It speaks for itself. It is a memorandum apparently our office sent out to the partners in the Arlington deal on June 30th of 1960.

* * *

[475] Q. Would you look at these documents now, 26, 27 and 29, Defendants' for identification. (Pause.) Mr. Deckelbaum, these three exhibits had to do with some of the matters that you handled during the operation of the joint venture, is that correct? A. Yes, sir.

MR. GALIHER: I would like to introduce these three exhibits, then, into evidence, Your Honor.

THE COURT: Let them be admitted.

* * *

Q. Mr. Deckelbaum, I show you Defendants' Exhibit No. [476] 30 for identification and ask you if you either drew the original of that photostatic copy of a lease or participated in the preparation of it? A. I participated in the preparation of this lease.

Q. And what is this document, Mr. Deckelbaum? A. This is the lease from the Shirley-Glebe joint venture, the owners of the Holiday Inn at Shirley Highway and Glebe Road, to the tenant, existing tenant, Whitestone Motor Inns.

MR. GALIHER: Your Honor, I would like to introduce this into evidence as Defendants' No. 30.

THE COURT: Let it be admitted.

* * *

Q. Mr. Deckelbaum, would you examine these documents, 31 through 38, if you please, sir. (Pause.)

* * *

Q. I am going to ask you whether these documents [477] constitute additional documents and memoranda contained in your file which have reference to different phases of the operation, construction, of the motel? A. That is correct.

MR. GALIHER: Your Honor, I would like to introduce these documents into evidence at this time.

THE COURT: Very well, let them be admitted.

* * *

Q. Now, Mr. Deckelbaum, what I have just shown you and what has been introduced into evidence only constitutes a small part of the documents and material con-

tained in your [478] file, is that not correct? A. That is correct.

Q. And you have told us before lunch that you brought with you today about everything contained in your file between April of 1959 and June or July or August of 1960?

A. In accordance with your request, I took out all documents between April of 1959 and June 30 of 1960.

Q. And you have in what has been introduced and in that stack there (indicating) documents covering every phase of the planning, the zoning, the construction, and operation of the Shirley Highway-Glebe Road venture during that period of time? A. That were in my file.

Q. Well, is there anything else elsewhere, in Mr. Margolius' file or perhaps that Mr. Hilland may have, in that period of time? A. Well, Mr. Savage has documents during that period of time; also all counsel in this case have, since its inception, requested certain documents. These documents I believe you have seen. They have been exhibited at pretrial or at other times. These documents have all been withdrawn from the files. I only could give you what was remaining in the files, and I have not had the benefit of Mr. Savage's files, so I don't [479] know what documents he has in his files.

Q. Well, is there anything that has not been exhibited to me during that period? A. Not that I am aware of.

Q. That you know of? A. Not that I am aware of.

Q. Thank you. I didn't think there were. Now, is there anything contained anywhere in the documents that have been shown to you or in those documents, which state or indicates that an agreement was entered into other than with respect to Shirley Highway and Glebe Road and nowhere else? A. May I have that question read back, please?

* * *

THE WITNESS: There are no documents.

BY MR. GALIHER:

Q. Well, there isn't anything in this file that you have shown to me today reflecting on that, is there, except as to Shirley Highway and Glebe Road? [480] A. That is correct.

Q. Now let me show you Plaintiffs' Exhibit No. 1 for identification, it's now Plaintiffs' Exhibit No. 1, and Defendants' Exhibit No. 3. Would you examine those documents? A. Yes, sir.

Q. No. 3 is the telegram which you produced here? A. Yes, sir.

Q. And No. 1 is the license agreement? A. Yes, sir.

Q. Now, you knew, did you not, Mr. Deckelbaum, that the only franchise that had been issued to the Shirley Highway-Glebe Road venture was for a particular site at the location of Shirley Highway and Glebe Road?

A. Could you fix the time, please?

Q. June 14th, 1959, when you got that telegram, or when that telegram came to Mr. Margolius. A. When this telegram came there had been no franchise issued. The telegram says they will issue upon application and a check — specifically, upon receipt application and check franchise for specified Washington location will be granted.

Q. And this is a copy of the license agreement that was thereafter granted, was it not, Plaintiffs' Exhibit No. 1? [481] A. This was the first license agreement that I ever saw, the first one — there were two — the first one that I saw with respect to Shirley Highway and Glebe Road.

* * *

BY MR. GALIHER:

Q. It is a fact, is it not, that you are aware that the franchise issued to the Shirley Highway-Glebe Road group was for only a site at the intersection of Shirley Highway and Glebe Road, is that not a fact? A. You will have to tell me when, because at one time I was not aware —

THE COURT: May I suggest to counsel it has been shown beyond per adventure of a doubt that the only franchise issued [482] was for the named site and there was no franchise issued for an area.

MR. GALIHER: Thank you, sir. May I have a letter of June 23rd, 1959 which was introduced into evidence by the plaintiff?

MR. FRIEDLANDER: If Your Honor please, might I ask the Reporter to read back the statement the Court just made?

THE COURT: Yes, indeed. You may read the statement.

(The Reporter read the statement of the Court.)

MR. FRIEDLANDER: We feel that the Court should take into consideration the erasures and changes of this site as shown by the expert testimony, because it has never been shown yet when and who removed the Arlington County and Washington, D.C. area, which was not a site, but —

THE COURT: Well, after all, gentlemen, it makes no difference what the franchise was, really. The issue that this Court has to determine is whether there was a binding agreement between the parties to create a joint venture to develop other Holiday Inns in the Washington metropolitan area.

MR. FRIEDLANDER: I wasn't critical of the Court's statement. I just wanted to make it plain —

[483] THE COURT: I understood that. I didn't construe it as being critical. But in any event, I think, gentlemen, we have been going off on too many tangents and minutiae, and I am not critical of that because that is likely to happen in a complicated case, but we must keep our eye on the sole issue, and there is only one issue for me to determine.

MR. HILLAND: Your Honor, may I say that on behalf of Mr. Margolius and Mr. Deckelbaum we do contend that when this franchise was issued January 15, 1960 it was for an area instead of a specific site. As the handwriting expert's testimony shows, it was for Arlington, Virginia, plus Washington, D.C.

THE COURT: Very well. But even so, that is not the point in the case. The question in the case is whether there was this oral agreement whereby the plaintiffs and the defendants created a joint venture to develop the Washington metropolitan area and whether this agreement is binding, if made. Now, there is plenty of evi-

dence that Holiday Inns stated we do not grant franchises for areas. We have had a tremendous amount of cumulative evidence on that point and no contradiction.

MR. HILLAND: Your Honor, in that connection may [484] I call Your Honor's attention to the letter from the General Counsel and Vice-President of Holiday Inns. What he said in that letter was that they don't grant them verbally, they grant them only upon an application when it has been approved.

THE COURT: Yes, but they say that we don't grant franchises for areas, I think. Well, in any event, you can argue that in the summing up, gentlemen. But I don't consider the issue of any importance. The only thing I have to decide, I will say again, is whether a binding oral contract was made to create this joint venture, and I think we ought to confine the testimony to matters that bear upon that.

MR. HILLAND: Without imposing on Your Honor, there is a point that I have tried to make several times, including in my opening statement. Among my contentions is this one: Assuming there was no agreement of any kind and that Frank Perper held this franchise, whether it was a site franchise or a general location franchise, as trustee, we contend that it belonged to the joint venture and any benefits inured to the venture and not to him personally.

THE COURT: Gentlemen, it belonged to the joint venture if the joint venture existed. I have to decide whether there was a joint venture.

[485] MR. HILLAND: But in that connection I am speaking in relation to the joint venture in relation to this one motel.

THE COURT: If the joint venture related to the one motel and Mr. Perper did obtain, which is questionable, a franchise for an area, then it wouldn't belong to the joint venture. Such a franchise would belong to the joint venture only if the joint venture was to develop the whole area.

MR. HILLAND: Well --

THE COURT: Now, gentlemen, let's proceed.

BY MR. GALIHER:

Q. You never talked to any of these defendants before the law suit was filed? A. Yes, I have.

Q. Who did you talk with? A. You mean in reference to the law suit, or talked to them?

Q. With reference to the law suit. A. I believe that either Mr. Finkelstein —

THE COURT: No, the question is did you or didn't you.

THE WITNESS: I believe he asked me who I talked to, Your Honor. I did talk.

Q. Who did you talk to? [486] A. I believe I talked with Mr. Weiss or Mr. Finkelstein.

Q. I mean any of the defendants. A. Oh, excuse me. I beg your pardon. I understood you to be talking about the plaintiffs. I did not talk with them about the law suit, no, sir.

* * *

REDIRECT EXAMINATION

BY MR. HILLAND:

Q. Mr. Deckelbaum, will you state the reason for a separate agreement for each motel? A. Yes, sir. When the site is determined by the promoters they at that time do not know how much capital is going to be needed, how many investors are going to be taken in, what the percentage of interest of the promoting group as opposed to the investor group is, and it is not until considerable work is done that this is known. In other words, you must obtain cost of construction, the plans, and so forth.

After this is done you then go and obtain investors. At this time you have outside parties, people who are not involved with you, who are investing money, and it is when you get this invested capital — these people put their money [487] up, they want a written agreement for it; and it is at this stage that these agreements are prepared. It is several months after the promoters' initial

steps toward the fruition of a Holiday Inn motel. In addition to that each and every motel has different costs, different amount of investors, and different projections involved. The return is different. Therefore, after the initial establishment or decision to go forward is made it is usually anywhere from three to six months before all the investors are obtained and a final agreement is arrived at.

Furthermore, each joint venture group, investor group, usually has some people in there who retain own counsel, who like to go over the venture agreement, make certain additions or corrections or so forth, and therefore an individual agreement is drawn up with each group after the parties, the investor parties are determined and the deal or the project is pretty well fixed as to what they are going to get for what they put into it.

Q. Are the parties the same in all of these joint venture agreements relating to each motel? A. No, sir.

Q. Are the promoters the same? Do you have the same [488] group of promoters in each case? A. Well, you say promoters in each case.

Q. In each motel or of each motel. A. Generally, speaking for our office, for example, they are generally the same, but there may be some little variation, one or two people may change.

Q. How about the investors, do they vary? A. They vary considerably because these people who invest cannot invest in each and every motel that a promoter puts up. You have some people who go into — a few people who may go into every one you establish, and then you have people who go into one out of three or just one out of ten. They have to have capital available to put into it.

MR. HILLAND: That is all, Your Honor.

RECROSS-EXAMINATION

BY MR. GALIHER:

Q. Mr. Perper and Mr. Savage are not promoters in the motels which you and Mr. Margolius own at Emporia and Hampton, Roads, Virginia? A. No, sir.

Q. Or what about the one down in Newbern? A. No, sir.

MR. GALIHER: Thank you.

[489] THE COURT: You may step down.

MR. HILLAND: May I ask one question?

FURTHER REDIRECT EXAMINATION

BY MR. HILLAND:

Q. When were the motels that Mr. Galihier just referred to promoted, before or after Shirley-Glebe? A. Oh, substantially after Shirley-Glebe.

* * *

[494]

CHARLES COLLINS

* * *

DIRECT EXAMINATION

BY MR. GALIHER:

Q. Your name is Charles Collins, C-o-l-l-i-n-s? A. Yes, sir.

[495] Q. Mr. Collins, what is your address? A. My business address is 3736 Lamar Avenue, Memphis, Tennessee.

Q. By whom are you employed? A. Holiday Inns of America, Inc.

Q. And in what capacity? A. I am Senior Vice-President and General Counsel.

Q. How long have you been associated with Holiday Inns of America? A. Since late in the year 1956.

Q. Have you at my request come to Washington for the purpose of giving testimony in this case? A. Yes, sir.

Q. And do you have the file in front of you? A. That is correct.

Q. I wonder if you would open the file and refer to the first correspondence that you find or the first papers in connection with a franchise which was later issued to

the Shirley Highway-Glebe Road — rather, to anyone.

A. I believe the two earliest papers or documents [496] that I have are the two which I am now holding in my hand. They are dated June 1959, the 13th of June 1959, to be exact.

Q. And what are they, Mr. Collins? A. These are Holiday Inns of America forms that are called personal information forms, which our company uses to obtain information of people who have signed these forms in connection with applying to our company for franchises.

Q. May I have them, Mr. Collins?

(The witness complied.)

MR. GALIHER: Your Honor, these are the originals of the two documents which I turned over to Mr. Hilland and which have been introduced into evidence. May I now get these marked, Your Honor, because I want to ask him about the handwriting on one of them.

THE COURT: Yes.

THE DEPUTY CLERK: Defendant Exhibits Nos. 39 and 40 marked for identification.

(Franchise application of Frank Perper dated June 13, 1959 marked Defendants' Exhibit No. 39 for identification;

Franchise application of Frank Perper dated June 13, 1959 marked Defendants' Exhibit No. 40 for identification.)

MR. GALIHER: Your Honor, I would like at this time [497] to introduce these exhibits into evidence, Defendants' 39 and 40.

THE COURT: Let them be admitted.

* * *

BY MR. GALIHER:

Q. Mr. Collins, would you look at Exhibit No. 39. Tell us if you recognize the handwriting on the exhibit, apart from the signature of Mr. Perper. A. Yes, it is my belief that all of the handwriting on the first page of this exhibit is the handwriting of Jeff Mann.

Q. Who is Mr. Mann? A. Mr. Mann is one of the men in our Franchise Sales Department.

MR. GALIHER: Your Honor, his testimony was read by you yesterday.

THE COURT: Yes.

Q. And will you tell us if you follow a practice and procedure with [498] respect to the filling out of these applications? A. It is required that everyone who applies to us for a franchise fill out these or some similar forms. These forms were the only forms that were in use by our company at the time of this transaction. So that we may get personal history, personal information, business history, and financial information regarding the applicants.

Q. Why would there be two in this case? A. Because the application was joined or it was submitted by two people, that is, the two people who submitted these documents were jointly working together for the franchise which was to be issued or which they were seeking.

Q. And who were those people? A. Mr. Harold Perper and Mr. Frank Perper.

MR. GALIHER: May I hand them to Your Honor at this time.

BY MR. GALIHER:

Q. Mr. Collins, what is the next document in chronological order that you have in your file with respect to this matter? A. By document I assume you are eliminating any correspondence which might have —

Q. No, I mean correspondence — I would like to go [499] through this in chronological order, if I can. A. Those documents were dated in June of —

Q. Would you wait just a second until the Judge finishes?

THE COURT: No, you may proceed.

Q. All right, sir, please continue. A. These documents were dated in June of 1959. I find in my files a carbon copy of a letter to Mr. Frank Perper dated July 14, 1959.

Q. I wonder if you would extract that paper, and I would like to introduce these into evidence as we go along, so if you would take them off, please.

* * *

Q. Can you tell us what this is, Mr. Collins? A. This is a letter from Mr. Jack Ladd, the Vice-President in charge of Franchise Sales, that is, for Holiday Inns of America, in which he states, and I will read just a [500] portion of the letter —

Q. I think we can hand it to the Judge.

MR. GALIHER: I would like to introduce this into evidence as No. 41 at this time.

THE COURT: Let it be admitted.

* * *

Q. May I have the next document in chronological order, please, sir? A. I have a carbon copy of a letter dated September 21st, 1959 from Mr. Raymond Williams, who was a Vice-President of Holiday Inns of America, to Mr. Frank Perper.

* * *

MR. GALIHER: I would like to introduce this into evidence, Your Honor. It has to do with a reference to the [501] plans for the building at the Holiday Inn at Arlington.

THE COURT: Let it be admitted.

* * *

Q. What is the next document, Mr. Collins? A. I have a carbon copy of a letter dated October 1st, 1959 from Mr. Kemmons Wilson to Mr. Frank Perper.

* * *

Q. Who is Mr. Kemmons Wilson? A. He is the Chairman of the Board of Directors of Holiday Inns of America and was, of course, at the time that letter was written.

MR. GALIHER: Counsel have asked me for the original of the letter. I would like to introduce it.

* * *

[502] (Defendants' Exhibit No. 43 for identification was received in evidence.)

* * *

Q. May I have the next document in chronological order, Mr. Collins? A. This is not in exact chronological order by date. I am just turning the papers over as

they were in my file. This is a carbon copy of an inter-office memo dated December 12th, 1958 which I dictated to Kemmons Wilson. He, of course, was sent the original and this was the carbon copy.

* * *

MR. GALIHER: I would like to introduce this as Defendants' [503] Exhibit No. 44.

THE COURT: Let it be admitted.

* * *

[504] Q. May I see the next document that you have, please, sir? A. I have a letter, a carbon copy of another letter, a longhand letter, and a carbon copy of an office memo, which have been stapled together as a group. There are several dates on these various documents, from August 8th, '59, June 6, '59, June 23rd, 1959, and October 2nd with no year designated, but I feel sure it was that same year.

* * *

THE DEPUTY CLERK: Defendant Exhibit No. 45 marked for identification.

(Letter dated Oct. 2 from Frank Perper; copy of letter dated June 23, 1959 from Wilson to Savage; Letter dated June 6, 1959 from Savage to Wilson; Holiday Inns office memo from Wilson to Ladd & Williams; all marked Defendants' Exh. No. 45 for identification.)

* * *

[507] THE COURT: * * * Let it be admitted.

THE DEPUTY CLERK: Defendants' Exhibit No. 45 marked in evidence.

* * *

[512] Q. Mr. Collins, I show you Defendants' Exhibit No. 46 and ask you if that is a copy of a letter which you sent to Mr. Perper on that date, sending to him a franchise which had been prepared in your office? A. Yes, sir, that is correct.

Q. Now can you tell us, if you have a copy, the way the franchise left your office on that date? Would it be simpler if I used the exhibit which we know is a copy of

the one that has the X mark on, for you to have before you, or would you prefer to use that one which actually has come out of your file? A. This is all right. What I am reading from is a photo-copy of the license agreement. But the license agreement —

Q. Why don't we get the original. May I hand this to you instead. Then you will have the actual one. A. Yes, sir, this is the original from the one of [513] which I was just speaking. But this was the first license agreement that was sent out from my office. I'd like to mention one thing for clarification. Technically these are license agreements, but conversationally we frequently refer to these documents as franchises. So we use the word franchise and license agreement interchangeably, but they mean one and the same thing. But this went out with the letter of transmittal dated June 13th, 1960 and the franchise was originally in the name of Frank Perper.

Q. Now, I notice obliteration on the first page of Plaintiffs' Exhibit No. 1. Will you tell us if, when you sent that with the letter which you have copy of there —

THE COURT: Just a moment. I haven't seen the letter. It is difficult to follow the testimony. I venture to suggest that you offer it in evidence if you want to use it.

MR. GALIHER: Yes, I will.

THE COURT: Let it be admitted.

THE DEPUTY CLERK: Defendant Exhibit No. 46 marked in evidence.

(Defendant's Exhibit No. 46 for identification was received in evidence.)

* * *

[514] Q. Again referring to Plaintiffs' Exhibit No. 1, I notice that there is a line which has been obliterated with apparently a pen and there are initials there. When this was sent with the letter of June 23rd can you tell us whether that was in that condition? A. No, sir, it was not. When the letter of transmittal went out that contained this license agreement, that space was blank above the line that was typed in.

MR. GALIHER: Now may I stop there a minute and show it to the Court. Your Honor, he has indicated —

THE COURT: I have seen this.

Q. Now, then, you mailed that to Mr. Perper, did you? A. Yes, sir.

Q. And did you receive that back? A. Yes, sir, the franchise came back. I have forgotten whether we had to re-send it because there were two places that need Mr. Perper's signature. I don't recall whether it was properly signed on the first time it was sent to him. But when it came back from Mr. Perper something had been written in longhand in this space underneath what now are some ink lines scratching that writing out.

[515] Q. And what had been written in?

(Pause.)

MR. GALIHER: I think we can agree on what had been written in, can't we, gentlemen? Arlington, Virginia, and Washington, D.C. Have I stated that accurately?

THE COURT: Just a moment. I didn't catch the colloquy between counsel.

MR. GALIHER: Your Honor, we have agreed that what the handwriting expert said was underneath was written in when it came back.

THE COURT: Then make that agreement with the Court.

MR. GALIHER: Yes, sir. Excuse me.

THE COURT: What is the stipulation?

MR. GALIHER: May I have the handwriting expert's — There it is. Your Honor, we agree that there was written underneath there Arlington, Virginia, and Washington, D.C.

THE COURT: Will you tell me again what it was agreed was written in?

MR. GALIHER: Where the obliteration is on Plaintiffs' Exhibit No. 1 —

THE COURT: I want to know what was written in in ink when it came back.

[516] MR. GALIHER: Arlington, Virginia, and Washington, D.C.

THE COURT: Very well. I have it now.

BY MR. GALIHER:

Q. What did you do as a result of getting the agreement back with the writing that I have just referred to?

A. When it was received in my office and I reviewed it, it was apparent that the reference that had been written in in longhand was not correct, and I subsequently wrote back to Mr. Perper. I can't quote from memory the exact words, there is a letter in the file, but I wrote to him to the effect that he only had a franchise for a specific location and not as had been written in in longhand.

Q. Will you produce that letter next, if you please?

(The witness complied.)

THE DEPUTY CLERK: Defendant Exhibit No. 47 marked for identification.

(Letter dated June 23, 1960 from Holiday Inns to Frank Perper marked Defendants' Exhibit No. 47 for identification.)

Q. Now, Mr. Collins, do I understand that you then wrote this letter back to Mr. Perper? A. Yes, sir.

Q. And did he likewise write back to you on the bottom [517] of this letter? A. He wrote —

THE COURT: Are you going to offer it in evidence?

MR. GALIHER: Yes, sir.

THE COURT: Well, offer it now so I can read it. If you offer a document later on it loses its context.

MR. GALIHER: Well, I wanted to bring out that while this was his letter, Mr. Perper had written a reply right on the bottom of it.

MR. FRIEDLANDER: No objection.

MR. HILLAND: No objection.

THE COURT: I thought you were referring to a reply in a separate document.

MR. GALIHER: No, sir, I am not.

THE COURT: Then that is all right.

BY MR. GALIHER:

Q. Have I stated that accurately, that Mr. Perper then wrote a reply on your letter? A. Yes, sir, on the bottom

of the original letter which I sent to him. Then he mailed that back to me and I received my own original back.

Q. And had you returned to him with this letter of June 23rd the license or franchise marked Plaintiffs' No. 1 [518] which you had scratched out or somebody in your office had scratched out the language Arlington, Virginia, and Washington, D.C.? A. Yes, sir.

MR. GALIHER: I now introduce this as Defendants' Exhibit No. 47, Your Honor.

THE COURT: Let it be admitted.

THE DEPUTY CLERK: Defendant Exhibit No. 47 marked in evidence.

(Defendants' Exhibit No. 47 for identification was received in evidence.)

THE DEPUTY CLERK: Defendant Exhibit —

THE COURT: Before you leave this subject, I want to ask the witness a question. As I understand it, before returning this license agreement you struck out the words Arlington, Virginia, and Washington, D.C., is that correct?

THE WITNESS: Yes, sir.

THE COURT: There are words in it, "Intersection of Glebe Road and Shirley Highway, Arlington, Virginia." Did you insert those?

THE WITNESS: I am not certain whether our office inserted those or whether Mr. Perper's office did, but the [519] reason that the franchise was resubmitted to Mr. Perper was to have the exact specific site location at which the Holiday Inn was to be designated on the franchise because the way it was written in longhand would have given the holder of the franchise quite a large and a vague and indefinite area, which our company never intended to do.

THE COURT: The question I had in mind, Mr. Collins, was this. When you received this back from Mr. Perper it read the license territory shall be only that specific site and location known as Arlington, Virginia, and Washington, D.C.

THE WITNESS: That is correct.

THE COURT: Now, were the words that follow, "and intersection of Glebe Road and Shirley Highway, Arlington, Virginia," there, or were they put in later?

THE WITNESS: They were put in later. They were not there at the time it was first sent back.

THE COURT: You just don't recall whether it was your office that put them in or whether Mr. Perper put them in later, is that it?

THE WITNESS: I do not recall which office inserted the typewritten words which follow, but they were not there when it was submitted to me first.

THE COURT: Thank you.

[520] THE DEPUTY CLERK: Defendant Exhibits 48 and 49 marked for identification.

(Copy of letter dated June 30, 1960 from Holiday Inns to Frank Perper marked Defendants' Exhibit No. 48 for identification;

Copy of letter dated June 30, 1960 from Holiday Inn of Arlington to Holiday Inns of America marked Defendants' Exhibit No. 49 for identification.)

MR. GALIHER: I wonder if I might have that exhibit when Your Honor finishes with it, for a second, Plaintiffs' Exhibit No. 1?

BY MR. GALIHER:

Q. You have told us that when you sent this franchise to Mr. Perper you had sent it so that it would read, "The licensed territory shall only be the specific site and location known as," and then there was a blank line?

A. That is correct.

Q. "Intersection of Glebe Road and Shirley Highway, Arlington, Virginia," was not on there at that time? A. No, sir, it was not.

Q. What about the language that followed, the additional paragraph, "It is understood and agreed that the fees and royalties herein," and so forth? A. That paragraph or sentence was there when it was [521] sent out.

MR. GALIHER: Would Your Honor like to look at it again, in the light of that testimony?

THE COURT: Yes. May I ask you this, Mr. Collins: As I understand it, Holiday Inns of America, Inc., charges a fee to the licensee for one of these license agreements?

THE WITNESS: Yes, sir.

THE COURT: And that being the case, it was your intention, was it, to grant a license only for a specific site, and that if thereafter a license was applied for an additional site there would be an additional fee?

THE WITNESS: That is absolutely correct.

THE COURT: Was there a set fee for all licensees or was the amount of the fee flexible, depending on the nature of the location and so on?

THE WITNESS: No, sir, the fee was the same, the purchase fee for a franchise is the same for everybody, regardless of whether they build in a small city or a large city. Now, the franchise fee has over a period of years increased in price.

THE COURT: But at that time it was \$10,000?

THE WITNESS: I believe that is correct. Now, in addition to the franchise purchase fee [522] which is payable at the time of the granting and execution of the franchise, there are daily royalty and advertising fees that are payable continually thereafter.

THE COURT: Are royalties based on the income?

THE WITNESS: No, sir, not on the income. On a per room basis, so much per night per room, regardless of whether the room is occupied or not. But the purchase fee for the franchise is the same.

THE COURT: I see.

MR. GALIHER: May I have that agreement again, Your Honor, please? Thank you.

BY MR. GALIHER:

Q. Now, what was your reason for sending this to Mr. Perper with the blank space at the time you did? A. At that time I did not know the address of the specific site for which his franchise had been granted.

Q. And did you therefore intend to have him fill in the address in the blank space? A. Yes, sir, that was

the reason that the blank was indicated, so he would fill in the specific site.

Q. And he then filled it in and sent it back to you, and when you looked at it you disagreed with it, I take it? A. Yes, sir, because the words that had been written [523] in in longhand gave or apparently were attempting to create quite a large area or territory franchise, and it made me rather angry at the time.

Q. And did you actually scratch out, then, the language yourself? A. I believe Mr. Walton, our Executive Vice-President, did that. I am not certain.

Q. Now, did not, then, your office, with the same typewriter that had put in the other language, then type in, 'Intersection of Glebe Road and Shirley Highway, Arlington, Virginia'? A. I believe we inserted it, but I am not absolutely positive because some time had elapsed between when my first letter was sent out and I do not recall exactly at what sequence of time I first learned that the specific site for his franchise was at the intersection of Glebe Road and Shirley Highway.

Q. Will you show us the next correspondence that took place regarding the license agreement? A. Could you please, sir, tell me the date on the letter of mine where Mr. Perper wrote a note at the bottom?

Q. That was June 23rd, 1960. A. I believe the next letter that I wrote to Mr. [524] Perper is Defendants' Exhibit 48, which is a carbon copy of a letter dated June 30th, 1960.

MR. GALIHER: I would like to introduce this as Defendants' Exhibit No. 48, Your Honor.

THE COURT: Let it be admitted.

THE DEPUTY CLERK: Defendant Exhibit No. 48 marked in evidence.

(Defendants' Exhibit No. 48 for identification was received in evidence.)

BY MR. GALIHER:

Q. Now, did you at the time this letter was sent which has just been introduced, return the agreement in the form that it appears there as Plaintiffs' Exhibit No. 1?

A. Yes, sir, I believe that our office had then inserted the typewritten description of the specific site on Glebe Road and Shirley Highway.

Q. Now, the initials that appear on that agreement are those of Frank M. Perper, and the other initials are of whom, Mr. Collins? A. The other initials are W.B.W., that is, William B. Walton, who is and was at that time Executive Vice-President of Holiday Inns of America.

Q. And is that, then, the way the license went into [525] effect or franchise? A. Yes, sir.

Q. After being signed by the parties? A. Yes, sir. We send it out unsigned by Holiday Inns of America. After the franchise holder executes it, returns it to us, if everything is properly filled out we then will have our officers execute it and return one copy to the franchise holder and we of course keep one executed copy for our files.

Q. And you did that in this case? A. Yes, sir.

Q. Would you tell us what Defendants' Exhibit No. 49 is? A. Defendants' Exhibit 49 is a copy of an acknowledgement which I executed on behalf of Holiday Inns of America which in substance signified our approval for Frank Perper to lease the operation of the Holiday Inn at Glebe Road and Shirley Highway to Whitestone Motor Inn, which was operated by Mr. Norman Shapiro.

MR. GALIHER: May I introduce this as Defendants' Exhibit 49.

THE COURT: Let it be admitted.

THE DEPUTY CLERK: Defendant Exhibit No. 49 marked [526] in evidence.

(Defendants' Exhibit No. 49 for identification was received in evidence.)

BY MR. GALIHER:

Q. Now, I notice that on Plaintiffs' Exhibit No. 1, and attention has been previously called by the Court to it, above the typewritten language designating the location there appears this language. First:

"Licensor hereby grants to licensee, subject to the terms and conditions hereof, a non-assignable, exclusive license to use said system in the construction and operation of one or more Holiday Inns within, and only within, the metropolitan area or areas, described as follows (hereinafter referred to as the license territory)."

And then appears the designation of the site.

MR. GALIHER: This is on the first page, Your Honor, of the license agreement.

THE COURT: I see.

Q. Is there not an inconsistency between the language which is printed and the language designating a particular site? And if so, can you explain the reason for it? [527] A. Yes, sir, there is an inconsistency that can be read into that. The background and the reason for it is as follows. At the time this franchise agreement was originally prepared and the form was printed it was the policy of our company to grant franchises for license territories which would include either a county or city or on one or two occasions we said all the territory within a radius of 25 or 50 miles of a certain location. That policy of granting an area franchise was in effect in our company up until probably 1958. I am not certain of the exact date. But around 1958 our company changed and we dropped and eliminated the policy of granting area franchises and we only granted a franchise for one specific location, with no territories.

And the typewritten language which was inserted in this license agreement was an attempt to make it clear that the franchise was only for one specific piece of ground, one site.

THE DEPUTY CLERK: Defendant Exhibit No. 50 marked for identification.

(Lease for Holiday Inn sign dated April 25, 1961 marked Defendants' Exhibit No. 50 for identification.)

THE COURT: Mr. Collins, I observe that there are

[528] other places in the printed portions of this license referring to licensed territory and so on, and in fact in one place it contains the words: "But if the licensed territory shall consist of or include the metropolitan area of 250,000 population or more, then to build at least one Holiday Inn to serve each United States highway within such metropolitan area." In other words, some of these provisions were really obsolete, were they not?

THE WITNESS: Yes, sir, they were inapplicable because the printed form was prepared when the licensed territory was an area and that is what we called our expansion formula. But when we went to a specific site location only, it's embarrassing from a standpoint of legal draftsmanship, but time and pressure is a factor and we did not have time to get the form reprinted. But we considered —

THE COURT: Well, you had time, of course, because you changed in 1958 and this was 1960. I suppose you just didn't bother reprinting the form, is that it?

THE WITNESS: We did not reprint the form because we considered that section as inapplicable because it was a specific site when we described the licensed territory on the first page.

[529] THE COURT: I see.

MR. GALIHER: I would like to introduce at this time Defendants' Exhibit No. 50, Your Honor, which has been shown to counsel.

THE COURT: Let it be admitted.

* * *

BY MR. GALIHER:

Q. And that is identified as a lease for a sign. Would you explain just what that amounts to, Mr. Collins? A. Yes, sir. Holiday Inns of America requires that its licensees or franchise holders lease from Holiday Inns of America the script signs. By that I mean where the words Holiday Inn are spelled out in our standard script. And also the outdoor sign which we call our Great Sign, a copy of which is on the corner of the franchise agreement, which I believe was Exhibit 1. We feel that this

gives our company a greater degree of control and also helps us to strengthen the standardization in signs. So we require that franchise holders lease these signs from us.

* * *

[531] THE DEPUTY CLERK: Defendant Exhibits 51, 52, 53, 54, 55, 56, 57 and 58 marked in evidence.

(Defendants' Exhibits Nos. 51 through 58 for identification were received in evidence.)

* * *

[532] Q. Would you, then, produce the second copy of the license agreement, please, which was referred to in one of those exhibits or several of those exhibits? A. I have an executed carbon copy of the franchise for the Glebe Road and Shirley Highway location that was re-issued in the names of Frank Perper, Harold Perper, and Edwin Cohen.

Q. What was the date of that? A. Well, we dated the franchise the 25th of April 1960. That is the date which is inserted at the top.

[533] Q. Was that actually when it was finally executed or was it in reality the following year? A. I believe it was the following year. Now, the reason we kept the original date is because a license agreement is basically a 20-year contract and we did not want to extend the 20-year life of the contract simply because there was an internal change in the registered owners of the license agreement.

* * *

(Copy of license agreement dated April 25, 1960 marked Defendants' Exhibit No. 59 and received in evidence.)

[534] CROSS-EXAMINATION

BY MR. FRIEDLANDER:

Q. Would you tell us, please, what position you held with the Holiday Inns of America in 1959, particularly in June of that year? A. I was Vice-President and General Counsel, also a member of the Board of Directors.

Q. In other words, your position was the same in 1959 as it was in 1960 and '61? A. Yes, sir.

Q. Now, what sort of file did you produce here? Was that a file from the legal office or was that the general file of the Arlington Motel? A. Well, this file came from my legal department, but I am confident that it contains copies of all documents relating to any legal transactions affecting this franchise that our company is involved in.

Q. In other words, you think it's the complete file? A. Yes, sir.

Q. And you produced it here in the condition it was in your office? You didn't take anything out, you didn't put anything in? A. No, sir.

[535] Q. Now, did there come a time when you learned of a letter dated June 6, 1959, which is one of Defendants' Exhibit 45? There are four parts to Exhibit 45. One of them is a letter June 6, 1959, written by Mr. Savage to Mr. Kemmons Wilson. There are four parts. One of them is a letter, as I understand, of June 6, 1959. Now, did you ever read that letter during 1959? A. I would have to see the exhibit to refresh my memory.

Q. Hooked together are four papers. The third sheet is the one I refer to. A. I am pretty sure that I saw this letter shortly after it was received by Mr. Wilson.

Q. Now, what did you do in response to that letter, if anything? A. I don't recall at the moment anything that I did, but perhaps my memory would be refreshed if I could look through the file to see whether or not I wrote any letter in reply to this shortly after the date of this letter of June 6th, 1959.

MR. FRIEDLANDER: Was Your Honor going to take a mid-morning recess? I thought I would give him an opportunity to look and see.

* * *

[536] THE WITNESS: I want to see if there is any letter I have written shortly after that date.

* * *

[537] Q. In looking at that portion of Exhibit 45, the handwritten letter bearing the stamp October 5, 1959, can you tell us whether you have ever seen that before?
A. Just a moment. (Pause.) I think I saw this letter shortly after it came in.

Q. What did you do after you saw that letter?

* * *

A. I don't believe that I wrote any letter or that I [538] personally took any action one way or the other.

* * *

Q. As a result of the request by Mr. Perper contained in that letter did you or did you not take any steps with Mr. Wilson or by yourself or did you advise any steps be taken? A. I don't recall that I took any action one way or the other.

Q. Did you or did you not arrange to make any changes in the franchises because of that letter? A. Not because of this letter. That had nothing to do with any changes that were made by transferring the franchise from the name of Mr. Perper only to the names of the three gentlemen I have previously mentioned.

* * *

[539] Q. In July of 1959 did your company not issue a franchise for the site of Winchester, Virginia, the town?
A. Yes, sir, we granted a franchise for Winchester, Virginia.

Q. Was that after or before you had changed your methods of not granting area franchises? A. Well, this letter was dated in 1959, but it's also necessary to understand that when —

Q. I just wanted an answer, if I could get it. Did you or did you not? A. I cannot give you an answer without an explanation that will be correct.

Q. Let me put the question to you, sir. Did you or did you not know of the application for a franchise by Harold [540] Perper, signed by Frank Perper, Defendants' Exhibit 39, for this Arlington area? It was dated 1959. A. Yes, sir, we had this application in our possession probably after June 13th, 1959.

Q. It was made on June 13th, was it not, '59? A. That is the date which appears on it.

* * *

THE COURT: I would like to call counsel's attention to the fact that this is absolutely immaterial so far as the issue of this case is concerned. What their custom was doesn't matter so far as the issue of this case is concerned. The fact is that the franchise actually granted in this case was for a specific location. I think that is the only thing that may be relevant.

* * *

MR. FRIEDLANDER: * * * [541] This is my tender: That the same date as the application, June 13, '59, that they applied for a franchise. Mr. Perper applied for a franchise for the Virginia area site, that they in the letter granting that site location also granted the Winchester City area site; that the application referred to in Defendants' exhibit says same as Winchester. And we propose to show that this witness' testimony or we seek to impeach it on the grounds that when he said they changed in 1958, they did not.

* * *

MR. FRIEDLANDER: It is not relevant to the issues of the case any more than the direct examination. Counsel put in the testimony that it doesn't matter a bit what the home office did in this case. In our judgment —

THE COURT: I am going to exclude this question.

* * *

[543] Q. What are the words area protection referred to in those exhibits as indicating Mr. Perper having same? What did that mean? A. It meant nothing. This letter was written by a salesman and he apparently was just dealing in vague generalities.

Q. You are speaking of — who wrote that letter? A. Mr. Jeff Mann.

Q. And what was his position? A. He was in the Franchise Sales Department as an Assistant Vice-President.

Q. And it meant nothing? A. Specifically and legally speaking, no, sir.

Q. What did it mean practically? A. That there were negotiations going on. It's just a routine acknowledgment letter which was a courtesy letter.

Q. Would you look at the next one? [544] A. I am now looking at Exhibit 16. (Pause.) A. right, sir, I have read it.

Q. What did the words protection or area protection mean in that letter? A. I do not know. This letter was also written by Mr. Jeff Mann. Mr. Mann is not a member of the Executive Committee or the Board of Directors. He has no authority to bind the company, and again it was just a salesman dealing in generalities.

Q. Did he turn down a franchise because he said Frank Perper had the protection of the area? A. Well, I don't dispute the wording as it's typewritten in the letter.

* * *

Q. I understand that the application for the City of [545] Winchester, Virginia and the application for this site were made at the same time, is that correct? A. I do not know.

Q. Were they granted at the same time, both licenses? A. I do not remember.

Q. I hand you a photocopy of an Executive Committee meeting and ask you if you can identify that as such? A. Yes, sir, this is either an excerpt or maybe a full set of minutes of a meeting of the Executive Committee of Holiday Inns of America on July 14, 1959.

Q. Does it refresh your recollection as to the fact that the franchise for the City of Winchester and for this site in Arlington were granted at the same time? A. These minutes indicate that the applications for franchises were granted at the same time, but I also call to your attention the statement in here that on Winchester, Virginia, the application is for a specific location.

Q. Have you had occasion to examine an exhibit produced here, No. 41, Defendant 41? After examining Ex-

hibit 41 would you care to state to the Court whether or not the application for Winchester was a city site or one single location? A. This letter, Exhibit 41, is a letter, is a copy of [546] a letter from Mr. Jack Ladd, our Vice-President, and he states in here — rather, reference is made to the city limits of the City of Winchester, Virginia.

* * *

Q. I find that you sent a franchise agreement dated [547] January 1960 and you sent it out by a letter in June 1960. Can you explain to us why the franchise was dated in January 1960 and sent out in June 1960? A. I do not recall and I can only assume that we were waiting for the determination of the exact site.

Q. You didn't have a site on the Exhibit 1 when you sent it out in your letter of June 1960. A. We didn't have a specific address, that is correct.

Q. Now, can you tell me any reason why you delayed sending a letter, sending the franchises dated January 1960 until June 1960 and sending them out? A. I do not recall.

Q. Did you have any instructions to wait until the hotel or motel was complete before you sent out the franchise? A. I do not think so.

Q. Did you know at that time that there was a dispute between Mr. Perper and one of his associates? A. No, sir, I had absolutely no knowledge of that.

Q. Hadn't you read the letter, Exhibit 45, the handwritten letter from Frank Perper? A. May I see the exhibit to which you refer?

(The exhibit was handed to the witness.)

This letter refers to some internal problems of [548] Mr. Perper's group. He normally acted in a limited partnership. But our company deals with one person or two, whoever might be designated as the franchise holder, and we stay out of their internal business affairs.

Q. Well, would you say that — could you tell us who the partners were on the Winchester deal? Who were the partners? A. I do not remember. I did not bring the

Winchester, Virginia, file with me and I haven't reviewed it in several years.

* * *

Q. Can you agree with me that there was some difficulties and that you knew about them because you had read the letter? [549] A. We read the letter, but we did not consider that as any of our business.

Q. But you did know of the difficulties, didn't think it was any of your business? A. We had received the letter.

* * *

[551] Q. Can you tell me what happened in 1959 so far as this franchise is concerned? A. That was the date our Executive Committee approved it.

[552] Q. Now, what did your office, as counsel, what did your office do in relation to this franchise during the year of 1959? A. I don't recall that we did anything. I am referring to the fact that at the moment I do not recall why there was a delay of a few months in getting the franchise physically prepared and mailed.

Q. Well, you actually mailed it in June of 1960, did you not? A. It was sent back and forth two or three times.

Q. Didn't the letter of June 23rd, 1960, Plaintiffs' Exhibit 47 — I'm sorry — A. Was that the first or the second time —

Q. I was wrong. It's June 13th, 1960, Exhibit No. 46, was a letter which you sent, the two franchises, original and copy, isn't that a fact? Do you want to see the letter? I hand you Defendants' Exhibit 46. A. Yes, sir.

Q. Now, on the 23rd of June, ten days later, you sent this letter which Mr. Perper replied to on the bottom. Do you remember that letter? A. Yes, sir.

Q. Now, what else took place in respect to this little [553] incident, what telephone calls did you have with Mr. Perper and what did he tell you? A. I do not recall at all.

Q. Did you not thereafter, in spite of your letter of June 23rd, give Mr. Perper the protection of the area? A. Protection of the area?

Q. Yes. Did you not advise with members of your hotel group in relation to giving Frank Perper the right to develop the area? A. No, sir; Mr. Perper has never had anything but specific site franchises only.

Q. Can you tell us, sir, whether or not to your knowledge Mr. Perper has successfully prevented other people from obtaining franchises in the area? A. I do not recall any occasion in which he has prevented anyone from getting a franchise in the Washington area that you refer to.

Q. And you have a complete knowledge of this situation? A. I believe I have attended all the Executive Committee meetings.

Q. Do you recall an Executive meeting, the application of Mr. Weiss or Mr. Finkelstein for a motel in the metropolitan area of Washington? [554] A. We have had numerous applications. I say numerous, perhaps that implies too large a number, but we have had several applications submitted by people seeking franchises.

Q. Do you recall one from Finkelstein or Weiss which was rejected because of Mr. Perper having the area protection? A. Let me make it clear that we don't reject anything because Mr. Perper does not now have and has never had an area protection. Mr. Perper does not control the granting of our franchises. That control is discretionary and lies only within Holiday Inns of America, Inc.

Q. How about John McShain, Inc., of Philadelphia, did they not attempt to get a franchise from your company and were turned down because Mr. Perper had the protection of the area? A. Mr. Perper has never had the protection of any area. We have granted a franchise to Mr. McShain in another location.

Q. Not in the Washington metropolitan area, though? A. I don't believe so.

Q. Now, why didn't you grant to him in the metropolitan Washington area? A. I do not recall all the circumstances, but I assure you that Mr. Perper does not control our actions.

Q. Is Mr. Perper engaged in business, in motels, with [555] any of your officers?

* * *

[562] FRANK M. PERPER

* * *

DIRECT EXAMINATION

BY MR. GALIHER:

Q. Your name is Frank M. Perper, you are one of the defendants in this case? A. I am.

* * *

Q. Mr. Perper, what is your age? A. Seventy years.

Q. What formal education have you had? A. I have gone to the eighth grade, quit school at the age of 14.

* * *

[565] (The Reporter read the question as follows: "Mr. Perper, on the occasion of the meeting that has been described in April of 1959, the meeting that has been mentioned in Mr. Margolius' office of a few days later, I believe on a Saturday, or on any other occasion leading up to the construction of Shirley Highway and Glebe Road Motel" —)

MR. GALIHER: May I stop you at that point and strike out "leading up to the construction of Shirley Highway and Glebe Road".

BY MR. GALIHER:

Q. — or on any other occasions when meetings were held of both the promoters, the plaintiffs, and anyone affiliated with you and the investors, when there was any discussion or any agreement of not only building a motel at Shirley Highway and Glebe Road but of developing the metropolitan area of the District of Columbia with additional motels?

* * *

[566] Q. Mr. Perper, was there ever any discussion on the occasion of the meetings either in Richmond, Virginia, or thereafter, between anyone who might have been affiliated with [567] you, the plaintiffs, and any other in-

vestors, with respect to the building and development of a motel or motels other than at the site of Shirley Highway and Glebe Road, Virginia? A. I never had any agreement with these men, and I would have to tell you the story, Mr. Galiher, from the start. I had a call from Mr. Marglius —

THE COURT: No, just a moment. You have finished answering.

MR. GALIHER: I think you have answered it.

MR. HILLAND: If Your Honor please, I move to strike it out as not responsive. He was asked whether there was any discussion, not whether there was any agreement.

THE COURT: Suppose you read the answer.

(The last answer was read by the Reporter.)

MR. GALIHER: May the answer stand up to that point?

THE COURT: Yes, the answer may stand.

MR. HILLAND: May we have the question read?

THE COURT: Yes.

(The last question was read by the reporter.)

MR. HILLAND: I renew my motion, Your Honor. The question was whether or not there was any discussion, and the answer was that there was no agreement.

[568] THE COURT: I have already overruled the objection and I have ruled that the answer is responsive.

BY MR. GALIHER:

Q. Now, Mr. Perper, I will not go into any of the testimony which has already been called to the attention of the Court. Let me, however, if I may, call your attention to the year 1960, after the Shirley Highway and Glebe Road site was completed. Did you have an office in downtown Washington at that time? A. My answer to that would be that I used to come in to Mr. Julian Savage's office. I had no office.

Q. When did you secure an office for the first time?

A. I would say the latter part of '60 or '61.

Q. And where was that office? A. In the Universal Building, on Connecticut Avenue and Florida.

Q. And who else was located at that same office? A.

Mr. Julian Savage, Mrs. Henrietta Sahm, our accountants.

Q. Were there occasions when Mr. Weiss and Mr. Finkelstein at that time visited that office in connection with the Shirley Highway-Glebe Road site? [569] A. One of them two came in once a month, at the end of the month, to endorse checks with Mr. Savage for the Glebe Road motel.

Q. Were there occasions when they visited you when you talked with both of them? A. I must have spoken to either one of them on every occasion.

Q. When did you first formulate your plans to go forward with the construction of a motel at Catholic University or near Catholic University, a Holiday Inn motel?

A. I had gone over there and looked at that ground in April of '59 with a friend of Alan Sahm's. We looked at this piece of ground where our motel is now situated.

* * *

[570] BY MR. GALIHER:

Q. When did you actually obtain the right to construct the motel on the property? A. I don't know exactly the date of when we started to construct it, but in about, I would say, the middle of 1960, in the middle of the year, I think that we tied up the ground to build this motel.

Q. Do you recall, Mr. Perper, when you actually broke ground after obtaining the ground and the franchise? A. I think that we broke ground there in the latter part of '60. I am not sure.

Q. Were there articles in the newspapers published in Washington about the Holiday Inn to be constructed at Catholic University? A. Yes, sir.

Q. Do you recall when that motel was finished? [571] A. That motel was finished sometime in the latter part of '61, and I am not sure of that because that is out of my department.

Q. Now, Mr. Perper, at any time up until this law suit was filed against you and your former wife, Mr. Savage, your son and your stepson, your other son, in November of 1962, did any of these gentlemen who are

plaintiffs here ever contact you in connection with any claim that they were presenting against you? A. No, sir.

Q. Did any of them, through any counsel who might have represented them, such as Mr. Friedlander, ever contact you prior to the filing of this law suit against you? A. No, sir.

* * *

CROSS-EXAMINATION

BY MR. FRIEDLANDER:

Q. Mr. Perper, how certain are you as to the date of April of '59 as the period that you first located this lot or site for the Shrine motel? A. I would say it was in the middle of the month that I was taken over there and I looked at this ground, and also taken over to the Shrine, and there were quite a number of [572] buses there and children coming out of the Shrine, tours.

Q. I think you misunderstood the question. I said how certain are you that it was in April of 1959 that you were shown the site of the Shrine motel? A. I am almost certain. For one reason, our holidays was approaching about a week before I had gone over there.

Q. Was the visitation to the site of the Shrine, was that before or after the Richmond meeting? A. That was after the Richmond meeting.

Q. Can you tell me how long after the Richmond meeting? A. I would say about ten days.

Q. The Richmond meeting took place in a motel in Richmond, did it not? A. Yes, sir.

Q. And do you recall which motel it was? A. Richmond No. 1, on Route 1.

Q. And who was present? A. Now will you make it clear to me who was present when I came in or who was present when we went out to talk?

Q. When you had the business meeting who was present? A. Mr. Margolius and the four plaintiffs.

Q. Was Mr. Deckelbaum ever there during the business [573] meeting? A. No, sir; he came out, opened

the doors to the outside of the swimming pool, looked over where we were standing, walked around the pool, and then came back into the restaurant.

Q. What did Mr. Weiss say to you that day in relation to the development of the Washington area? A. Mr. Weiss started off and I asked Mr. Weiss, am I going to be hired as a consultant, motel consultant? And he says, no, we first want to find out whether you like the location. I says, Where is this location? He said, At Glebe Road and the Shirley Highway.

I says, I don't think we should have any more conversation about it. I had turned this down about a year and a half ago. The heirs had come over to my hotel, 2400 16th Street, Washington, and spent two hours up at my apartment. I had gone over and looked at the ground the following day. There was an old house sitting on there. And after a conversation with them I told them I didn't like the entrance into the motel if we should build one here.

I then contacted Mr. Kemmons Wilson at my next board meeting, and him and Wallace Johnson came up shortly [574] after and they stopped at Marriott's and they went over and looked at this ground. Mr. Wilson said to me, he says, Frank, there was a broker also approached me on this in Alexandria, but, he says, I just don't like it, we scoured this road and there is not enough traffic to take care of all them motels on this road.

Q. Now, what did Mr. Weiss say to you? That was the question. A. Mr. Weiss told me where the ground was. And immediately I didn't think I would want to stay there and talk about it because I did know that Charlie Luria was making preliminary plans or had them made and he was going to build the Cherry Blossom Motel on this ground. I didn't think, while Weiss was talking to me, that he could get this ground. I then turned to Mr. Weiss and said, Let me check these roads and also let me check the motels, it will take two or three weeks before I could give you an answer.

Q. Answer to what, sir? What had he asked you that you were going to answer? A. He asked me if I had the franchise on this particular spot and I said to him I am earmarked for it. And I was earmarked for it in the latter part of [575] '58, when the Magazine boys had the Holiday franchise on the Shirley Highway and then gave it up and the Charter House was built.

Q. Now, Mr. Perper, Mr. Weiss told you where the location of the site was? A. He did, sir.

Q. And you told him, you said something about you felt there wasn't any use to talk any further? A. That is right, sir.

Q. But Mr. Weiss did ask you whether or not you had the franchise for this site? A. He asked me did I have the franchise, and I said, No, Holiday Inn of America will earmark you for it and until you get a site and everything that goes with that location, then they give you the franchise.

Q. What did you understand at that time and what did you tell Mr. Weiss went with the franchise? A. I don't quite get that question, sir.

Q. What did you tell Mr. Weiss went with the franchise? You testified a few minutes ago that everything that went with the franchise. A. That's right, sir.

Q. What went with the franchise? [576] A. Well, zoning, whether Holiday Inn of America approves of that ground; there is quite a number of questions.

Q. Well, what did you mean by earmarked? A. When you are earmarked — and I have been earmarked for 15 motels —

Q. Just tell us — A. — and I was earmarked for this.

Q. Now, this is the metropolitan area of Washington? A. No, sir.

Q. What was it that you were earmarked for? A. I was earmarked for this particular area.

Q. What area are you speaking of? A. I am speaking now of Arlington.

Q. Arlington County, Virginia? A. Arlington.

Q. Were you speaking of the County? A. I am speaking of Glebe Road and Shirley Highway, which is called Arlington.

Q. Do I understand you that the only thing you were earmarked for was the one site? A. Well, I would say in '59 you only got a site, you never got nothing else but a site location.

Q. Let's talk about what you told Mr. Weiss. What did [577] you tell Mr. Weiss other than what you have said? A. That is all I said to Mr. Weiss. I was only out there — of course, I didn't look at my watch, but after I heard where the location was I only spent about 10, 15 minutes, and I come in and Mrs. Sahm was sitting, having coffee with Mr. and Mrs. Ross, and they hadn't finished their coffee when I come in. So that is about the time I was out there.

Q. As I understand it — and make sure I understand the answer — Mr. Weiss told you where the site was located. You indicated no interest in that? A. That is right, sir.

Q. And then you left? A. I come in, and my wife was sitting there by Tommy Ross and Mrs. Ross, and I says we are ready to leave, and we left.

Q. Did you have any conversation with Mr. Finkelstein at all? A. Well, during the conversation with Mr. —

Q. Did you have any conversation with Mr. Finkelstein? A. At what point?

Q. At any point at the time that you were having the business meeting in the motel in Richmond. [578] A. You are speaking around the swimming pool?

Q. If that is where the business meeting was, yes. A. I think he had come in with a few words while Mr. Weiss was talking.

Q. What was it, the substance of what he said to you? A. I don't know. I didn't pay much attention to it. I was listening to Mr. Weiss.

Q. What did you say to Mr. Finkelstein? A. Didn't say anything to Mr. Finkelstein.

Q. Did you talk to Mr. Stolar? A. No, sir. I didn't know these men were coming. When Mr. Margolius called me in Florida he said I am going to meet a man by the name of Weiss that used to be with Leo Bernstein. I was surprised when Mr. Deckelbaum and four men walked into the restaurant.

Q. How about Mr. Broidie, did you talk to him? A. No, sir.

Q. Did you talk to Bernie Margolius that day? A. No, sir, I haven't spoken to Bernie. I might have said a word or two to Bernie.

Q. Did you say anything? A. Yes, I did. I spoke to Bernie before these men come in.

[579] Q. And what did you say to him? A. He was leaning on a cigar counter in the restaurant when I come in with Mrs. Perper, Mrs. Sahm. Immediately Mrs. Sahm walked over and sat with Tommy Ross and his wife. And Mr. Margolius said to me, You are going to meet a Mr. Weiss. Now, I says, Bernie, now what's this all about? He says, Well, let Mr. Weiss tell you when he gets here. Then he said it's about a motel that is to be built in Arlington. But he didn't go any further where it was. Had he told me then, I'd have never waited.

Q. You were not interested in a motel at that site, is that right? A. The way I conduct — I got to answer it my way. The way I conduct, when I get a location — and I have got over 38 of them — I go out and I look at the road, I check the motel, how many cars are in front of it. And I told this to Mr. Weiss, it takes me three weeks before I could ever give him an answer.

Q. Now, did you talk to Bernie Margolius in the restaurant about the site at Shirley Highway and Glebe Road? A. No, sir; he just told me it was in Arlington, didn't tell me where it was.

Q. Did you talk to Mr. Finkelstein in the restaurant [580] about the site? A. No, sir. I didn't see Mr. Finkelstein in the restaurant because the four men, when they come in with Mr. Deckelbaum, they walked right

through the double doors along the pool, and I followed them out there with Mr. Margolius.

Q. What time was this that they walked through the doors to the swimming pool? A. I would say it was between 11 and 12 o'clock.

Q. And what time did you walk out of this meeting, telling them you were not interested? A. I would say probably a half-hour after I had gone down around the swimming pool. I didn't look at my watch.

Q. So that would have been before noon, wouldn't it? A. No, sir; half-hour after around 12 o'clock would be 12:30.

Q. And did you then go into the restaurant? A. Well, you got to come through the restaurant in order to leave to go out and pick up your car.

Q. Did you see Mr. Finkelstein, Mr. Weiss, Mr. Broidie, and Mr. Stolar eating in the restaurant? A. I was surprised when I heard that because this happened around June 5th — I mean April the 5th, and the date that you are speaking of, it was a Jewish holiday, between the [581] 23rd and the 30th —

Q. There are six people — A. It was Passover.

Q. You deny, then, it was on the 26th of April that this meeting took place in Richmond? A. Yes, sir.

Q. You say it did not take place on the 26th of April? A. I am almost sure.

Q. Was it Sunday? A. Yes, sir.

Q. And do you recall when the option was acquired by this group? A. I understand — I didn't have an office then, Mr. Friedlander, but I understand it was picked up around the 28th of April.

Q. Now, isn't it a fact that the meeting that you had in Bernie Margolius' office was one week after the meeting in Richmond? A. Yes, sir.

Q. Was it the meeting in Bernie Margolius' office, was it at that time when they had already picked up the option? A. No, sir.

Q. You deny that the option wasn't acquired on the [582] 28th of April? A. Yes, it was, sir.

Q. Was your meeting in Bernie Margolius' office after the 28th of April? A. It was one week after the 5th of April.

Q. Now, wasn't your name on the door of an office in Washington during April of 1959? A. No, sir.

Q. Your name did not appear on the office occupied by Mr. Savage? A. No, sir.

Q. Did you have a name of a Hotel Management, do you remember that, Corporation, Hotel Management Corporation? A. At what date are you speaking of?

Q. In April, 1959. A. No, sir. We had a Motel Management, but it was not —

Q. Where was its office? A. Well, the books were kept in Mr. Savage's office. He was the accountant.

Q. This company was for the purpose of buying furniture for the motels that you were building, was it not? Wasn't that the purpose of the company? [583] A. Not at that time, sir.

Q. Well, wasn't this company, didn't they have an office in the District of Columbia and didn't you occupy that office? A. No; the books were kept in my accountant's office, but I did not have an office.

Q. Did the corporation have an office? A. Well, that you will have to take up with Mr. Savage. I am not acquainted with it.

Q. You have no information about this company? A. Oh, yes, sir.

Q. This company bought the supplies, furniture, for the Shirley-Glebe Motel site, motel? A. Not at that time, sir. Motel Management —

Q. When did they do it? A. Motel Management started to purchase furniture when we opened our office on Connecticut Avenue.

Q. Now, when did you open your office on Connecticut Avenue? A. I think it was in the latter part of '60 or in the beginning of '61. I happened to be in Florida at the time.

Q. When did you come up from Florida in '59, do you

recall? [584] A. I come up from Florida in '59 on the 5th of April '59.

Q. What is the source of your fixing the date? Do you have some memorandums? A. Yes, sir.

Q. Where are they? A. My wife, Mrs. Sahm's birthday was April the 1st, it was right after Easter, and we decided to drive up to Washington right after her birthday.

Q. Now, when you came to Washington or driving to Washington had you any arrangements that you had made to meet in Richmond with Mr. Margolius? A. Yes, sir.

Q. And what was the purpose of meeting in Richmond with Mr. Margolius? A. He told me that I was going to meet a man by the name of Mr. Weiss, who was connected with Leo Bernstein, in reference to a motel.

Q. Motel sites? A. No, sir; motel.

Q. Just a motel? A. That's right, sir.

Q. Did you ever at any time talk to Mr. Weiss, Mr. [585] Finkelstein, Mr. Stolar, or Mr. Broidie about the area, building motels in the area? A. What date, sir?

Q. At any time. A. I spoke to them in Bernie's office a week after the meeting in Richmond.

Q. What was said about developing the area at that time, according to your memory? A. Nothing, sir. I was up at that meeting exactly no more than ten minutes. I left Mrs. Sahm down in the cafeteria while I went up in the elevator. And when I come in Mr. Finkelstein, Mr. Weiss, Mr. Margolius, Mr. Savage, was in one room, and Mr. Deckelbaum would walk out of his room, come as far as the door and walk back again.

Q. What happened there? What did you say to them? A. I told them I was not ready to give them an answer.

Q. An answer to what? A. An answer to the piece of ground up on Shirley Highway.

Q. What was the question that anybody had presented to you that you were to give an answer to? A. Mr. Margolius knows —

[586] Q. Not what he knows. Tell us what the question was. What question was it you were supposed to

answer? A. I was supposed to make a survey of the Shirley Highway of all the motels and see what business they were doing, which would take two to three weeks, and I was to give them an answer on that. And when I arrived in Mr. Margolius' office I wanted to know why he called me to ask me to come over, and he says, Aren't you ready yet to give us an answer? And I says, No.

Q. Now, when you said no, then you walked out and left the meeting? A. I went down the elevator and met Mrs. Sahm at the cafeteria and we left.

Q. Well, now, what was your arrangement or what had been said to you to indicate what you would be paid for making this survey? A. That was never spoken — they never made any remark whether I was a motel consultant or whether they were going to pay me, not until the fourth meeting.

Q. Now we fixed two. Did there come a third meeting and can you tell us where it was? A. The third meeting was up in Mr. Weiss' office on [587] K Street.

Q. And who was there? A. Mr. Weiss and Mr. Finkelstein.

Q. Anybody else? A. I think there was a young lady in the office. I am not sure.

Q. How about Mr. Savage, was he there? A. No, sir.

Q. What happened at the third meeting between you and Mr. Weiss and Mr. Finkelstein? Tell us what they said to you and what you said to them. A. Well, it wasn't much they said to me.

Q. What was it, how little? A. Mr. Weiss asked me was I finished making my survey.

Q. What did you say? A. And I says, Well, it's starting to look pretty good; I checked the Charter House, the Howard Johnson, and so on, and it looks as though they are doing business.

Q. At this point did they tell you they had acquired the option? A. At this point I would say no.

Q. Then what else was said at this third meeting? A. That is about all. I really went there to see [588] what kind of an office Mr. Finkelstein and Mr. Weiss

had because I didn't know these four men when I met them in Richmond. They come in in sport shirts. And I also during these two weeks went over to Mr. Finkelstein's apartment at the Quebec to see how he lived. I also made an investigation on Mr. Broidie. He lived over in northeast; he was living with his sister. I knew about the other two men because Mr. Savage was their accountant, so I didn't have to check them.

Q. Now, this third meeting that you spoke of, that ended very briefly? A. Yes, sir.

Q. And then what did you do with reference to the site at Glebe Road and Shirley Highway? A. I would go out probably around 12 o'clock at night four nights a week and count the cars and so on.

Q. Then did you have a fourth meeting with Mr. Finkelstein and Mr. Weiss? A. Yes, sir.

Q. And where did this take place? A. In Mr. Weiss' office.

Q. The same office you had been at the third meeting? A. Yes, sir.

[589] Q. And who was there this time? A. The four plaintiffs and Mr. Margolius. I don't remember whether Mr. Finkelstein was there.

Q. Deckelbaum, you mean? A. Deckelbaum, rather.

Q. But you said the four plaintiffs? A. Yes.

Q. What kind of a meeting was this? Was it in the evening or the afternoon or the morning? A. It was at night.

Q. And can you remember — A. It was after 8 o'clock because I had dinner over at the Ambassador Hotel.

Q. What was said to you at that time by any one of the four plaintiffs, Mr. Deckelbaum or Mr. Margolius? What was said to you? A. They were sitting around, all of them, and talking among themselves. I had very little to say that night. And now that I told them it was in my opinion a good location they says, How about a builder? I says, I thought Mr. Broidie was going to be the builder

Q. What did they say to that? [590] A. They said he was not going to be the builder.

Q. Did you tell them the name of a builder? A. Beg pardon?

Q. Did you tell them the name of a builder? A. I sure did.

Q. Who did you give them? A. I gave them Keith Jones out in Myrtle Beach, South Carolina. We made the call around 11 o'clock that night.

Q. You called Mr. Jones? A. Yes, sir.

Q. What were you calling him about? A. In order to find out just what the plaintiffs were going to divide up the percentages, you must know what that motel is going to cost. And Mr. Jones gave me an idea just about what it was going to cost. And then you decide what the investors are going to put in. Then you know exactly about what the promoters can take.

Q. Were the plans already drawn for the motel at the time of the fourth meeting? A. No, sir.

Q. How would they compute the cost without plans [591] being drawn? A. Mr. Jones can do that on every job. He's done about eight jobs for us.

Q. Even without plans? A. Yes, sir.

Q. Well, now, you determined, I take it, that evening what it was going to cost. Can you remember what it was, the figure? A. Roughly I would say around six hundred thousand. I am not sure.

Q. And then what was the decision made at this fourth meeting after you discovered what it was going to cost? A. Repeat that question, sir.

Q. What was the decision, then, at the fourth meeting after you got the figure for the cost? A. Well, the next step was that they were going to hire an architect.

Q. Now, before they hired the architect — and that is still at this fourth meeting — did you decide on how the interest would be allocated, what share they'd have, what share you and Mr. Margolius would have? A. I am almost sure that they had said that they would get 25

per cent and give me 15 per cent and 10 per cent [592] to Mr. Margolius.

Q. Weren't you and Mr. Margolius acting as one group? A. No, sir.

Q. In other words, you and Mr. Margolius were not partners at that time? A. No, sir; never was a partner.

Q. What motels had you built at that point that Mr. Margolius didn't have at least an equal interest with you? A. We built quite a number.

Q. Give me the name of one of them, first. Let's start with one. A. All right. We built Charlotte, North Carolina.

Q. What was the interest of Mr. Margolius and your interest in Charlotte, North Carolina? A. Mr. Margolius got 12-1/2 per cent for being the attorney, Mr. Keith Jones got 12[1/2 per cent for being the builder, and I received 12-1/2 per cent.

Q. For doing what? A. For putting the whole deal together. I found the ground, I got the mortgage, I built it, I furnished it. I spent months on it.

Q. Well, the furnishing of the motel you got paid extra for that, did you? [593] A. I did not, not in Charlotte. I did not, sir.

Q. Now, you also had a motel — that was in 1957, wasn't it, the Charlotte motel? A. Beg pardon.

Q. That was in 1957? A. No, sir; No. 2 was in 1963.

Q. Well, you already had this suit pending when No. 2 was built. Did Mr. Margolius still get a third of that? A. No. We started that, we bought the ground in early — either late '61, late '61.

Q. Who bought the ground? A. Myself and Keith Jones.

Q. Now, the Charlotte motel, the original one, that was you and Mr. Margolius had the same interest, did you not, the same amount, 12-1/2 per cent? A. Are you speaking of No. 1, sir?

Q. Yes. A. No. 1 was the same ones; Keith Jones had 12-1/2 for being the builder, Mr. Margolius as attorney got 12-1/2, and I got 12-1/2 for putting the deal together.

Q. So I was correct when I said that you and Mr. Margolius had the same interest, the same amount of interest, 12-1/2 per cent? A. That is correct.

[594] Q. Now, in Gainesville didn't you and Mr. Margolius have the same interest or the same amount of interest? A. Yes, sir; in Gainesville Mr. Margolius had 20 per cent, I had 20. But Mr. Margolius would not let Mrs. Sahm have anything there. He had said she was a trouble maker and wouldn't let her in. So I gave Mrs. Sahm 5 per cent of my 20.

Q. Now, can we stay on the subject for a moment? What motels built before 1962 in which you had an interest and in which Mr. Margolius had no interest? Can you tell me the name of one of them? A. Yes, sir.

Q. Which one? A. Myrtle Beach, South Carolina.

Q. And when was that built? A. That was built somewhere in early '54.

Q. In 1954 you had a motel in which Mr. Margolius had no interest? A. Yes, sir. He didn't have no interest when we built it, but when I was to draw a lease up I had given Mr. Margolius a 5 per cent interest. He would rather have that than have a fee.

Q. And what was the next motel that you say that you built or you were interested in in which he, Mr. Margolius, [595] had no interest? A. Winchester.

Q. Now, Winchester was applied for at the same time that you applied for the Shirley-Glebe Highway, is that right? A. Winchester, I was out to Winchester and looked at that ground sometime in April.

Q. Excuse me. I hate to interrupt you, but in the interest of time, was the application for Winchester made exactly at the same time as you made the application for the Shirley-Glebe Motel? A. I think when I was down at my board meeting sometime in March and I asked about getting a franchise for Winchester.

Q. Did you make your application in writing or did you do it orally? A. I usually do it orally down there.

Q. Did you or did you not make the application for Shirley-Glebe Motel orally, or did you sign an applica-

tion? A. Mr. Friedlander, when I am in Memphis, Tennessee, all I got to do is to go into the franchise office and tell them I am going to have — I would like to have a franchise for a certain motel in a certain town. Now, the only way that they give you a franchise is when you get a site. They put your name down for it; [596] nobody else can get it. But they do not give it to you until you get a site.

Q. When did you get the right to the area, metropolitan area of Washington given to you by the motel people?

A. What year and what date?

* * *

THE COURT: Did you ever get a right to the metropolitan area?

THE WITNESS: Your Honor, when Mr. Johnson and Kem Wilson in early '58 was at the Marriott's, Kemmons Wilson told me that he would like me to develop Washington. He told me I am the only one he can trust if he wants to come into this area, that I wouldn't fight him in courts, to keep him out. He was then dickering around at that particular time with a site right next to Marriott's, where there is a small motel situated there now.

[597] THE COURT: That was when, Mr. Perper?

THE WITNESS: That was, I would say it was late '58.

THE COURT: Very well.

BY MR. FRIEDLANDER:

Q. So in early '59 or April '59 you were well aware of the fact that you had the first refusal of the Washington metropolitan area? A. I hadn't spoken to Kemmons Wilson from that time until about March of '59 anything about Washington, D.C.

Q. Mr. Perper, generally you enjoy talking, don't you? A. Sometimes, sir.

Q. And when you met Mr. Weiss and Mr. Finkelstein and the others in Richmond that day didn't you have a conversation with them in which you explained your position with the motel people? A. No, sir. I was surprised when four men walked into that restaurant and Mr. Deckelbaum up in front. I was only to meet one man

there, Mr. Weiss, and the way Mr. Margolius told me on the phone, he was connected with Leo Bernstein. And knowing Leo Bernstein's office, I kept the appointment.

Q. Now might I find out from you when you met these [598] gentlemen did you not discuss your position with the motel people, with the Holiday Inn people? Didn't you tell them how you knew these people? A. No, sir.

Q. Did you tell them that you were friendly with the president? A. No, sir.

Q. Didn't you tell them you were on the board? A. No, sir. I don't tell anybody my business unless, unless they happen to be a very, very dear friend of mine. I never knew these four men before.

Q. You weren't trying to impress them? A. No, sir; I don't have to impress anybody.

Q. Can you tell me, sir, whether or not after this fourth meeting in which you found out how much it was going to cost and you decided how the interest would be— A. I did not decide that, sir.

Q. Well, I thought you said that you were — A. No, sir; Mr. Weiss decided what interest they were going to get.

Q. What did you say to Mr. Weiss when he decided what interest you would have? Did you say yes or no? A. I didn't say anything because he knew I wouldn't [599] go in with Mr. Margolius any more. Mr. Margolius and I broke up our friendship back after Washington's Birthday of '59, when he was about to kick me out of Durham, North Carolina, and take Deckelbaum as his new manager.

Q. Excuse me, Mr. Perper. How did Mr. Weiss or Mr. Finkelstein or the others know that you wouldn't go in business with Bernie Margolius? Did you tell them? A. I did not, sir.

Q. Who told them, to your knowledge? A. But I do know Mr. Margolius must have told them or Mr. Deckelbaum bring them out from Washington to Richmond; they must have had a conversation.

Q. Well, now, as I understood it, they came down to

the motel and you talked to them briefly, and during that period nothing was said to these men that they couldn't have a deal with you and Margolius because you wouldn't deal in a position where you would be Margolius' partner? A. We didn't speak about that at all.

Q. When was the first time, if ever, you told them that the reason you couldn't deal with them was because you couldn't deal with Margolius? A. On our fourth meeting, that evening in Mr. Weiss' office.

[600] Q. At that time what did you tell Mr. Weiss or Mr. Finkelstein, how did you put it, the substance of what you said relative to your relationship to Bernie Margolius? A. The only thing that I told Mr. Weiss, when we were walking towards the door, after I had called Myrtle Beach, Keith Jones, I said, Mr. Weiss, I am not interested in this 10 per cent, I don't need it; Mr. Savage may take the 5, I don't need the 10; I don't want to have nothing to do with Mr. Margolius. He says to me then, Well, don't you have somebody who — your children would take it up? And that is when I told Mr. Weiss that Harold Perper and Mrs. Sahm's son would take up the 5 per cent each.

Q. Now, as I understand it, it was at this fourth meeting you say you told them that you wouldn't go in the deal, but your son Harold would? A. That is the first time they asked me about going in the deal because I have not okayed it until the fourth meeting.

Q. And you want us to understand, or it's your testimony that you told them that Harold Perper would stand in for you? A. Not for me, sir.

[601] Q. For himself? A. For himself and Alan Sahm for himself.

Q. But you were not going to be interested in the Glebe Road? A. I will put the deal together, I will put the whole deal together, I told them. And I put No. 1 deal together and I don't have an interest, in Richmond.

Q. Well — A. I put that whole deal together.

Q. What did you do next, after you gave up all your interest? Did you then introduce them to Harold Per-

per? A. No, sir. If I can remember, my son Harold came up to Washington I think a day before the meeting in Bernie Margolius' office, and if I am correct I think he went to Mr. Margolius' office the day before the second meeting.

Q. You want the Court to understand that you had introduced your son Harold Perper to Mr. Finkelstein?

A. No, sir.

Q. In 1959? A. No, sir, I didn't say that.

Q. How about Mr. Weiss? A. No, sir.

Q. Did you introduce him to Mr. Broidie? [602] A. No, sir.

Q. Mr. Stolar? A. No, sir.

Q. Who did you introduce your son Harold to, of the group of people who were interested in the — A. You will have to ask Mr. Harold Perper. He went up to Mr. Margolius' office the day before my meeting on Saturday.

Q. In other words, you didn't take him with you? A. No, sir.

Q. Your testimony is that he went up without you? A. He came in from Florida.

Q. Now — A. I think he was going to the opening game of the baseball.

Q. Can you tell us about what you did next, after the fourth meeting? Did you ever go down to Memphis? Did you ever go to Memphis on this deal? A. I have gone down to Memphis so many times —

Q. On this particular deal? A. On this deal?

Q. Yes. A. No, sir.

[603] Q. Did you go down there on the 13th of June, 1959? A. I might have.

Q. Didn't you sign two applications down there for Harold Perper? A. I don't have to go to Memphis to sign applications.

Q. Did you sign — A. I don't know. I can't remember. But I don't have to go there to sign them.

Q. You don't remember whether you went to Memphis to sign the applications? A. I go down there so often, every month, I can't remember just the dates.

Q. Did there come a time when you received a notice from the Holiday Inns of America, a letter in which they sent you a copy of a franchise? A. What date, sir?

Q. In June of 1959. A. I remember receiving.

Q. Now, what did you do with the franchise, towards filling it in or completing it? A. Well, there was a blank there and I wrote in there Arlington and Washington. Now, the reason I did that was if they didn't put [604] in Washington, people out in Arizona or out on the west coast picking up the book, our directory, they would never know where Arlington was; but if you mentioned Washington, then they would know that it's five minutes or ten minutes from Washington. And that is why I put in Washington.

* * *

[605] Q. Now, will you notice the writing as it has been re-drawn on this 2 and 3, do you see here? A. Yes, sir.

Q. Whose writing is that? A. That is mine, sir.

Q. And you wrote in Arlington, Virginia, plus, the figure plus, Washington, D. C., didn't you? A. Yes, sir, just for the reason I told you.

Q. Wasn't the real reason — A. Yes, sir.

Q. I hadn't finished. Wasn't the real reason that you had intended and planned to develop the Washington metropolitan area? A. No, sir, it had nothing to do with that, sir, at that time.

Q. Well, did you, when you were called to account for putting in Arlington, Virginia, and Washington, D.C., what answer did you make to the attorney, Collins? A. I told Charlie Collins that I put that in so we could have it in the directory so they would know where it is.

Q. I show you Defendants' Exhibit 47 and ask you to read at the bottom of that exhibit and tell us whose handwriting it is? Is that your handwriting?

* * *

[606] A. Yes, sir, that is my handwriting.

Q. Now, that was in June of 1959. And refreshing your recollection as to what you told him —

* * *

THE WITNESS: June 23rd, 1960.

* * *

Q. Excuse me. You are correct. It is 1960. Now, what did you tell him, does that refresh your recollection of what you told him? A. I told him exactly what is on this letter.

Q. What was that, sir? A. Well, it speaks for itself.

Q. This is what you told him? A. At the bottom of the letter.

* * *

[607] Q. Did you in October of 1959 send a written communication to Mr. Kemmons Wilson or someone else at Holiday Inns, in which you requested them not to let Bernie Margolius or anyone else have any sites in the metropolitan area?

* * *

THE COURT: Is there such a letter in evidence?

MR. GALIHER: Yes, sir, there is a letter in evidence.

THE COURT: Well, it speaks for itself.

* * *

Q. I hand you a letter dated October 2nd and ask you if you wrote that?

THE COURT: What is the exhibit number, please?

MR. FRIEDLANDER: 45, the hand written —

THE COURT: Oh, yes.

A. Yes, sir, I wrote this letter on October 2nd.

Q. Now, had you had any conversations with Mr. Margolius before you wrote that letter; that is, in October '59?

MR. GALIHER: You mean at any time or particularly?

[608] THE WITNESS: What date?

MR. FRIEDLANDER: During that period immediately preceding the letter.

MR. GALIHER: Mr. Friedlander has now cured my

objection by adding during a period immediately preceding the letter. That was what I was trying to bring up.

THE WITNESS: Yes, sir.

BY MR. FRIEDLANDER:

Q. Tell us what happened between you and Mr. Margolius which resulted in your writing that letter. A. He kicked me out of Durham, North Carolina, in September, in his office.

Q. Now, prior to September '59 what was your relationship with Mr. Margolius? A. Prior to when, sir?

Q. Prior to September '59. A. No good ever since about three or four days after Washington's Birthday in '59.

Q. Well, I understood in your prior testimony that the reason you and he had come to a parting of the ways was because he kicked you out of Durham. I understood that didn't occur until September '59. A. It happened right after Washington's Birthday of [609] '59 and it also happened while we were building Richmond No. 1, when he replaced me with Deckelbaum.

Q. Well, now, if you will follow me for a moment I will try to make the question clear. Did there ever come a time when you advised Deckelbaum, Margolius, Weiss, Finkelstein, Broidie and Stolar that you did not have the right to develop the Washington area? A. Repeat that again, sir.

THE COURT: Suppose we have it read.

(The last question was read by the Reporter.)

A. No, sir, I never had a conversation with these men about Washington.

Q. Did you ever notify the Holiday Inns not to grant any franchise to Mr. Finkelstein, orally, by telephone, or word of mouth? A. I would never do that.

Q. What in your letter that you have before you, Exhibit 45, whom did you refer to when you used the words and others? You said not to give — A. Mr. Deckelbaum and Mr. Margolius.

Q. The words used in the letter, if I might read them

to you: "You may want to build at some future date and [610] you therefore wanted me to have this franchise which I agreed to accept, Kem. Mr. Margolius is not with me on future deals so if ever he or anyone else wants a Washington franchise will you let me know first or give me ten days to decide."

MR. GALIHER: Now, Your Honor, I respectfully submit that Mr. Friedlander has misquoted that letter. He asked a question which assumed that what Mr. Perper had said was not to give a franchise in the District of Columbia to anybody. Now that isn't what this letter says.

MR. FRIEDLANDER: Let's read the whole letter.

THE COURT: The pending question, as I understand it, is who are the others referred to in the letter.

MR. FRIEDLANDER: That is all I asked.

THE COURT: Is that the question?

MR. FRIEDLANDER: Yes, sir.

BY MR. FRIEDLANDER:

Q. Who are the others; anyone else referred to in the letter? A. Mr. Deckelbaum.

Q. You state to the Court now that you didn't mean Mr. Weiss? A. I did mean only Mr. Deckelbaum and Mr. Margolius, [611] according to that letter.

Q. Didn't you receive notice from the Holiday Inns that they had received a request from Mr. Weiss and Finkelstein for a Holiday Inn franchise in the metropolitan area? A. I didn't know anything about it. I was down in Florida when this happened.

Q. When did it happen? A. I don't know, but when it did happen, when I heard about it —

Q. When was it, when did it happen that you were in Florida? A. Oh, I am down in Florida every other month. But when I got back from Florida I heard that Mr. Deckelbaum and Mr. Weiss is trying to get a motel built up on the Baltimore Highway. I can't remember just the date and when it happened. I wasn't interested.

Q. What, if anything, did you do about that? A. I didn't do anything about it.

Q. Didn't you get a copy of a letter that Mr. Kem Wilson or the other gentleman from Holiday Inns had sent to Mr. Finkelstein and Mr. Weiss? Didn't they send you a copy of it? A. No, sir. If they did, I didn't get it, sir.

[612] Q. In order to get a franchise for any place in the Washington metropolitan area wasn't it necessary for them to have your permission after the Shirley-Glebe Motel had been built? A. No, sir, they don't have to — the matter of fact is Eddy Cohen and Manny Baskin, who is in the Shirley Highway deal, came to see me about, oh, I would say six months after we built the Catholic University motel, and they had a piece of land in Washington and they come up and asked me whether I would allow them to build there, and I says yes, you go ahead and get a franchise. They told me what the ground cost and I asked them how many rooms are you going to build there and I told them rooms is going to stand them six or seven thousand dollars a room just for the ground, and they never came back.

Q. Let me ask you why did they come to you to get permission to get a franchise in Washington? A. They did not come to me to get permission. They came to me as a motel consultant.

Q. Did you ever try to stop McShain from building in Arlington? A. In Arlington? I never heard that he was going to [613] build in Arlington.

Q. McShain building a motel in Arlington, did you stop him? A. You got it all wrong. He wanted to build in Washington.

Q. Did you stop him there? A. No, I didn't stop him.

Q. Who stopped him? A. Nobody. He just sent a letter down wanting to know just what it cost to build a motel in Washington. Mr. Wilson showed me the letter while I was there.

Q. He showed you a letter from McShain? A. Yes, John McShain.

Q. Do you know why he showed you the letter? A. No; just because I talked to Mr. Wilson quite a lot.

Q. Who else — what other time did you attempt to assert some sort of right to prevent people from building in the Washington area? A. I never stopped anybody. Mr. Aarons, Al Aarons came to my step-daughter's home on Nebraska Avenue one Sunday and he would like to build a Holiday at 17th and Rhode Island.

[614] Q. But he came to you because he knew he had to come to you to get the franchise? A. No, sir, he came to me as a consultant. He was going to build an apartment house there and he came up to me, and after I got through pointing out just what a motel would do there.

Q. Now can you tell me, sir, at what point did you determine that you would go into this deal through your son — I can't think of his name. A. Harold.

Q. Harold Perper. At what point did you decide Harold Perper should be in the deal? A. On our fourth meeting in Mr. Weiss' office.

Q. Did there ever come a time when you attended any meetings of the joint venture? A. Yes, sir.

Q. And in what capacity did you attend the meeting? A. As I stated before, I was going to help to put the whole deal together, and that happened to be the fifth meeting.

Q. I show you Plaintiffs' Exhibit 11 and ask you if this is your handwriting? A. Yes, sir, that is my handwriting? A. Yes, sir, that is my handwriting.

[615] Q. And you wrote that letter? A. Yes, sir. No date on it.

Q. When did you write it? A. I don't remember. There is no date on it.

Q. Well, did you write it at a point where the construction of the Shirley Motel had reached a certain level? A. I don't know, sir. I wrote that letter, and before I wrote it I was in touch with Mr. Weiss and they told me that as long as I would not operate that motel they are going to lease it or sell it.

Q. Well, now, in this letter you said you had — I have only ten per cent. What did you mean by that? A. That who had ten per cent?

Q. You. I have only ten per cent, you said. You meant interest in the motel, didn't you? A. Well, the only way I can explain that is when I am trying to sell something the customer usually says are you interested in it? And I might have said — in order to make the sale I might have put that there.

Q. Mr. Perper, what you said was:

"I am not interested in a lease-back as I have only a 10 per cent interest and I am not going to spend my time for that. I usually have [616] around 25 to 35 per cent."

A. I usually give a sales talk when I sell something.

Q. Did you or did you not represent in writing, at a time when the building had reached the first floor:

"Jerry, they are up to the first floor, so let me know immediately on this."

At a time when the building had reached that point did you not represent in writing that you had a ten per cent interest?

THE COURT: Well, I think that speaks for itself.

* * *

Q. Mr. Perper, did you receive authority from anyone connected with the Glebe Motel site operation to sell the property? A. Yes, sir.

Q. Who gave you the authority to sell? A. Mr. Weiss and Mr. Finkelstein.

[617] Q. And when did they tell you to sell or authorize you to sell? A. I don't remember the date, but it was in '59.

Q. And where were you at the time they were alleged to have told you to sell? A. They had come over to — or one of them, rather, had been over to Mr. Savage's office in late — it must have been probably October or November when they come over to sign checks.

Q. And do you recall which one you state told you to sell the property? A. Well, the conversation was that they would like to lease or sell it. The matter of fact is, after I contacted someone in New York, both I think it was Finkelstein and Weiss went over to New York to see them.

Q. With reference to a sale of this motel? A. Well, I don't know whether it was a sale or lease. When I contacted these people I told them it may be a lease with an option of a sale.

Q. Who were these people that you say you contacted? A. Helmsley Spear's office was one of them, in New York, Helmsley Spear on 42nd Street, New York City.

[618] Q. And when was that, would you say? A. Sometime in the latter part of '59.

Q. In 1959 the only person who was signing checks was Mr. Savage, isn't that a fact? A. Mr. Finkelstein and Mr. Weiss, I met them in that office in '59.

Q. Mr. Perper, the question was in 1959 wasn't it a fact that only Julian Savage was signing checks and Finkelstein and Weiss were not signing checks in 1959? A. That may be true, but they came to that office. He represented them in their accounting.

Q. You testified that they came over, one of them came over to sign checks and that is when you talked to him? A. That may be. I said that, but I didn't know whether they were signing checks there or taking it up with the accountant, because he represented them. I thought it was signing checks. I didn't ask.

Q. Do you recall that both of them gave you permission to sell then? A. I spoke to both of them.

Q. Are you a real estate broker? A. No, sir, but I have sold many a hotel and motels.

Q. Without a license? [619] A. I didn't get any commission.

Q. And what were you offering this property for sale for?

THE COURT: Which property are you referring to?

MR. FRIEDLANDER: The Glebe Motel Shirley Highway.

BY MR. FRIEDLANDER:

Q. What were you planning to get from the sale of the motel? A. Well, any Holiday Inn motel usually sells for about eleven, twelve thousand dollars a room when you sell it.

Q. I think you misunderstood me. My question may not have been clear. What were you personally to gain from making a sale? Were you to get a commission? A. No, sir.

Q. You had no interest in the motel? A. No, sir.

Q. And why — A. But I put the motel together, watched the building, furnished it and got it started.

* * *

[621] Q. Now, did Mr. Finkelstein, was he ever requested by you to look for sites in the Shrine area prior to the time you acquired the site upon which you built the Shrine motel? A. In my 45 years of being in the hotel and motel business I have never yet had a real estate man go out and pick sites for me.

Q. Did you or did you not ask — A. No, sir.

Q. Your answer is no, you did not. Did Mr. Weiss present any sites to you? A. No, sir.

* * *

[623] Q. I hand you Defendants' Exhibits 39 and 40, being applications for the Glebe-Shirley Highway Motel, and ask you if you signed those?

MR. GALIHER: Your Honor, we will stipulate Mr. Perper signed the original applications. I don't know whether [624] those are photostats or the original.

* * *

Q. Where were you when you signed them, Mr. Perper? A. I don't know whether I was in Memphis or I signed it up here.

Q. Is there some reason why the applications are made in the name of Harold Perper? A. No, sir.

Q. Who filled out the forms? A. They must have did that in Memphis.

Q. Who told them that the directors and officers and partners would be the same as Winchester, Virginia?

A. I don't know, sir.

Q. Did you tell them? A. No, sir.

[625] Q. What was the source of information, as far as you know, and who gave it to the people at Holiday Inns to fill out those applications? A. When they make them out, if I was down there at a board meeting or down there as I usually go down, I signed them.

Q. Did you tell them to put Harold Perper's name in as the applicant? A. I may have.

Q. Did you tell them that there would be the same partners as were in Winchester, Virginia? A. No, sir.

Q. Did there come a time in April of 1963 when you requested information from the Holiday Inns and asked them to get some papers together for you? A. Is that this letter, sir?

Q. That little memorandum on the front. A. I don't know anything about that.

Q. You never requested any information from the Holiday Inn people in 1963, April of '63? A. No, sir. This is the first time I have seen this.

Q. Mr. Perper, I understand that you were in Europe in July of 1961, when the application was made for the franchise [626] on the Baltimore Capitol Parkway by Mr. Finkelstein and Mr. Weiss? You were in Europe at that time, were you not? A. I may have been.

Q. And when you returned from Europe you were contacted by the Holiday Inns of America, were you not? A. No, sir.

Q. Your testimony is they did not contact — A. What month?

Q. In July of 1961. A. In July of '61?

Q. Or August of '61. A. I was in Europe.

Q. And when did you return? A. In August.

Q. And in August were you not contacted by the Holiday Inns of America? A. I was not in Washington or Florida; I was in New York City.

Q. Were you contacted by the Holiday Inns? A. No, sir, I was not.

Q. When was the next time you talked to the people at Holiday Inns? A. Well, after that I was at the convention in [627] September of '61.

Q. At that time did you discuss with them the granting of the franchise to Mr. Weiss and Mr. Finkelstein? A. I have never, never spoken to anyone down there about that franchise.

THE COURT: When you refer to franchise to Mr. Weiss and Mr. Finkelstein, which franchise are you referring to?

MR. FRIEDLANDER: The Baltimore Capitol Parkway.

BY MR. FRIEDLANDER:

Q. I hand you Plaintiffs' Exhibit 16, a letter to Mr. Finkelstein from Mr. Mann of the Holiday Inns dated August of 1961, and ask whether or not you did not receive a copy of that? A. No, sir.

Q. You had not — A. I never received a copy of this.

Q. And you had nothing whatever to do with the rejection of that request for a franchise? A. No. The matter of fact is at that meeting, one of the meetings down in Memphis I was asked if I wanted to release Emporia, Virginia, Hampton, Virginia, which was mine, both, to Bernie Margolius, and I am pretty near sure he thanked [628] me for it.

Q. Were you asked whether you would release the Washington metropolitan area so Mr. Finkelstein could get his franchise? A. I was never asked.

* * *

BY MR. HILLAND:

* * *

[629] Q. What was the date of your application for the franchise at Catholic University? A. I think my franchise or my name put down for it was early '60, early '60, very early.

* * *

[630] THE COURT: I first have to decide whether there was a joint venture agreement for the entire Washington area. If I decide there was not, that ends the case. If I decide there was, then we will resume the trial and then determine which motels it applies to.

MR. HILLAND: Your Honor, we are going to contend, [631] as I have tried to indicate before, we are going to contend that the right to develop the Washington area sprang from the first franchise, which was Shirley-Glebe.

THE COURT: Exactly.

MR. HILLAND: Sir?

THE COURT: Yes, that is right.

* * *

[634] THE COURT: * * * The only thing I have to decide is what transpired at Richmond on April 26, 1959, isn't that it, what happened in Richmond on the fatal day?

[637] BY MR. HILLAND:

Q. Mr. Perper, on page 51 of the transcript of your testimony on cross-examination you said yesterday:

"Oh, I am down in Florida every other month. But when I got back from Florida I heard that Mr. Deckelbaum and Mr. Weiss is trying to get a motel built up on the Baltimore Highway. I can't remember just the date and when it happened. I wasn't interested."

Mr. Deckelbaum never participated in any effort to obtain a Holiday Inn franchise on the Baltimore-Washington Highway, did he? A. I was told that Mr. Deckelbaum, Mr. Shapiro, Mr. Weiss and Mr. Finkelshtein was trying to get a franchise.

Q. Who told you that? [638] A. I don't remember the personnel in Memphis told me that.

Q. Who told you that? A. Someone in Memphis. I can't remember who it was.

Q. Did you ever check it out. A. No, sir.

Q. Isn't it a fact that Mr. Deckelbaum had nothing whatsoever to do with that application? A. I still don't know that, sir.

Q. You do know it was the application of Mr. Finkelshtein and Mr. Weiss, don't you? A. From what I hear here in court.

Q. From the time the Holiday Inn in Charlotte, North

Carolina, was built to the time the Holiday Inn at Shirley-Glebe in Arlington was built you and Bernard Margolius had built and had equal shares in seven Holiday Inn motels, not counting the one at Shirley-Glebe, is that correct? A. No, sir.

Q. And you and he had participated in the building of the motel at Charlotte, North Carolina, had you not? A. Yes, sir.

Q. And you had equal shares in that, equal interests, you and Mr. Margolius? [369] A. The only way I can answer that, sir, is I started off by saying I had 25 per cent. I then gave Keith Jones 12-1/2 of my 25, and Mr. Margolius had 12-1/2.

Q. Mr. Keith Jones was the builder on that job, was he not? A. Yes, sir; he was my first associate in Myrtle Beach.

Q. So that in the wind-up of it you had a 12-1/2 per cent interest and Mr. Margolius had a 12-1/2 per cent interest? A. Yes, sir.

Q. And you and Mr. Margolius participated in the building of the Holiday Inn at Gainesville, did he not? A. Yes, sir.

Q. And you each had the same or equal interests in that Holiday Inn, did you not? A. Yes, sir.

Q. And you and Mr. Margolius participated in the building of the Holiday Inn in the heart of Columbia, South Carolina, did you not? A. That is where our trouble started, sir.

Q. Well, that doesn't answer the question. You participated, did you not? A. No, sir; I put the deal together, but I was not in that deal. [640]

Q. Didn't you and Mr. Margolius have equal interests in that motel? A. No, sir.

Q. Did you put—what interest did Mr. Margolius have in it? A. I think he had about 17 per cent.

Q. And what percentage interest did members of your family have in that? A. 25 per cent.

Q. You and Mr. Margolius participated in the build-

ing of the Holiday Inn at Groton, Connecticut, did you not? A. No, sir.

Q. You did not? All right. Did you build a motel in Groton, Connecticut? A. No, sir.

Q. Did you ever participate in the building of a hotel at Groton, Connecticut? A. No, sir.

Q. Did you participate with Mr. Margolius in acquiring an interest in a motel in Groton, Connecticut? A. No interest in the motel, but Mr. Margolius sold a motel, and it was not a Holiday Inn, and he gave me five per cent or gave my son five per cent of the commission [641]

Q. And that was the same interest he had, was it not? A. I don't know, sir.

Q. And you and he participated in the building of a Holiday Inn at Massena, New York, did you not? A. No, sir.

Q. Did you participate in any motel in Massena, New York? A. No, sir.

Q. Did he? A. I think he did.

Q. Did your son? A. No, sir.

Q. Did you have anything to do with a Holiday Inn in Massena, New York? A. I was the one that got the franchise for Massena, New York.

Q. Did you ever acquire any interest in it, either in your name or in the name of someone else? A. No, sir.

Q. Did you sell an interest in that motel? A. No, sir.

Q. Did Mr. Margolius buy a motel at Massena, New York? A. Not that I know of. He was associated with a [642] doctor up there.

Q. Now, you and Mr. Margolius participated in the building of the Holiday Inn known as Richmond No. 1, did you not? A. I had no interest there.

Q. Well, you put a 15 per cent interest in the name of your son Martin Perper, did you not? A. I had given Martin Perper this when it was started and Mr. Margolius asked me to put the deal together, which I did.

Q. And Mr. Margolius had a 15 per cent interest?

A. No, sir, Mr. Margolius had a 20 per cent interest.

Q. And your son Martin had a 15 per cent interest?

A. He did, sir.

Q. Did your son Harold have an interest? A. No—that I can't answer.

Q. Did your wife Henrietta have an interest? A. She got a five per cent interest.

Q. All right. Then members of your family had an interest equal to that of Mr. Margolius in Richmond No. 1? A. Yes, sir.

Q. At the time you had that interest in the name of your son Martin how old was he? A. I think he was about 18 years old, sir. [643]

Q. Now, you and Mr. Margolius started to organize a Holiday Inn Motel in Norfolk, Virginia, did you not? A. Yes, sir.

Q. And you resold it? A. The State had taken it, taken the ground, not the motel.

A. And you divided equally the proceeds of that resale? A. No, sir.

Q. How was it divided, then? A. I can't remember, sir. That was way back in 1955 or '56, I think.

Q. Do you deny that it was divided equally between you, the proceeds of the sale? A. I am almost sure it wasn't sir. My brother-in-law was in that deal with me.

Q. Well, were the shares that your brother-in-law and you had equal to that of Mr. Margolius? A. No sir, we had almost twice as much as Mr. Margolius.

Q. From 1950 to 1957 did you go into any motel deal in which Bernard Margolius was not a partner? A. Mr. Margolius was never a partner. He was always the attorney.

[644]

* * *

Q. When your deposition was taken in this case on March 15, 1963 in Mr. Friedlander's office were you asked this question and did you make this answer:

"Question: Now, from 1950 through 1957 did you go into any motel or hotel deal in which Bernie Margolius was not a partner of yours? "Answer: No." Were you asked that question and did you make that answer?
A. I think so, but I call my investors partners when I am introduced.

* * *

Q. From 1957 to 1959 you did not build any motel or participate in the building of any motel in which Bernard Margolius did not have an interest with you, is that correct? [645] Yes, sir, we built Durham, North Carolina.

THE COURT: What was your answer?

THE WITNESS: We built Durham, North Carolina.

BY MR. HILLAND:

Q. The question, Mr. Perper, is from 1957 to 1959 you did not build or participate in the building of any motel in which Bernard Margolius did not have an interest with you, is that correct? A. It is not correct. In Columbia, South Carolina, we built in '58 and I had no interest there.

MR. HILLAND: On page 324, Your Honor, the first question and answer.

Q. Mr. Perper, were you asked this question and did you make this answer:

"What motel, if any, did you build from 1957 to July 1959 in which Bernard Margolius did not have a joint interest with you? "Answer: I didn't build any then that he didn't have an interest in with me." Were you asked that question and did you make that answer?
A. At that time I never looked at my records, and I now looked at my records and found that in '58 I had no [646] interest in Columbia, South Carolina.

* * *

[647] Q. Mr. Perper, what did you do when you received that letter of January 9, 1962 from Mr. Margolius and its enclosure, which is the letter of Julian Savage dated June 6, 1955 addressed to Kemmons Wilson? A. I

will answer the first, of January 9th. I happened to be in Florida until about March of that year and I never seen this letter until recently, this letter here.

Q. Until when? A. Recently, the last couple of months.

Q. Where was the original of it? Where did you see the letter? A. Going through a lot of my correspondence.

Q. Where did you see? A. I saw it in my office on Connecticut Avenue.

Q. Where is that letter now? A. I don't know, sir.

Q. Who has it? A. Probably my attorney may have it. I am not sure.

Q. Do you mean by your answer that from the time that letter reached your office in January 1962 to the present [648] time you have done nothing about it? A. No, sir, because at that particular time I was squabbling with Mr. Margolius about the license that were sold.

Q. What do you mean by "no, sir," that you did nothing about, it, is that what you mean? A. I did nothing about this letter, no, sir.

Q. Now, you have entered into the joint venture agreement in relation to the Holiday Inn at Catholic University on September 1, 1961, had you not?

* * *

A. I don't know the exact date, sir.

Q. Well, I show you what is marked Plaintiffs' Exhibit No. 28 and ask you if this refreshes your recollection? A. The record speaks for itself, sir.

Q. Well, is that correct, September 21, 1961 that that joint venture agreement was entered into in relation to the Holiday Inn at Catholic University? A. My signature is on here, sir; it must be true.

Q. So that Mr. Margolius made a demand on you within four months of the time you entered into that joint venture agreement, did he not? A. Mr. Margolius knew I was going to build there in [649] late '59.

Q. Now, the Holiday Inn at Catholic University was the first Holiday Inn in the Washington metropolitan area after Shirley-Glebe? A. Yes, sir.

Q. Now, after you received that letter of January 9, 1962 in your office you proceeded with the building of the Holiday Inn at Catholic University and in other locations in the Washington area, did you not? A. I did not see that letter until recently, going through my files. It must have been in early '65.

Q. The carbon copy of that letter was marked at pre-trial, was it not? A. I don't know, sir.

* * *

[665] BY MR. HILLAND:

Q. Now, Mr. Perper, referring to that same exhibit, which I believe is Plaintiffs' Exhibit No. 1, those initials in the lower lefthand margin, F.M.P., are in your handwriting, are they not? A. Yes, sir; and the other initials is Bill Walton, William Walton.

* * *

[673] REDIRECT EXAMINATION

BY MR. GALIHER:

* * *

[674] Q. Mr. Perper, Mr. Hilland asked you about the interest of Mr. Margolius in several motels. May I ask you about his interest in Durham, North Carolina, and Richmond No. 2 as compared to your interest, please? A. In Durham, North Carolina, I have had 17-1/2 per cent, Mr. Margolius had 12-1/2. In Richmond No. 2, I have had 30 per cent, which I gave 15 per cent to Mrs. Sahm, Bernie had 15.

* * *

[676]

HAROLD PERPER

DIRECT EXAMINATION

BY MR. GALIHER:

Q. Your name is Harold Perper? A. That is right.

* * *

[677] Q. Mr. Perper, you are the son of Frank M. Perper? A. That is correct.

* * *

Q. Mr. Perper, did there come a time in the month of April 1959 when you visited the office of Mr. Bernard Margolius? A. Yes, sir.

Q. And while there did you have a discussion with Mr. Margolius concerning a proposed motel at Shirley Highway and Glebe Road? A. Well, the discussion was not too much about—

Q. First of all, I asked you did you have a discussion? A. Yes, we had a discussion.

* * *

[678] Q. Can you tell us what you recall about the conversation, what was said by him and what might have been said by you? A. Well, I recall that I told him that I had received a phone call while I was in Florida from my father and he asked me to stop in Washington on my way to Philadelphia to speak to Mr. Margolius and tell him that if there was to be a motel built on the site at Shirley Highway that I was to be the partner and that I was also to take out a franchise.

* * *

[679] Q. What else was said? A. I told him if it was agreeable with him, that I had no objections to coming north and supervising the construction of the job, but I didn't want to become a commuter. Either I wanted to work full time or not at all. He was fully aware that I

have located sites, I have built from the bottom foundation right up to the roof, I have bought furniture for motels, I have secured mortgages for motels.

* * *

[680] Q. Up to that time had you ever met any of these four gentlemen who are plaintiffs, Mr. Weiss, Mr. Finkelstein, Mr. Stolar or Mr. Broidie? A. No, sir.

Q. When after that did you meet any one or all of them, if you can recall? A. Well, I didn't meet Mr. Stolar until these proceedings started; I met him outside the courtroom. Mr. Weiss and Mr. Finkelstein I don't think I have still formally met, but I have seen them come in the office and they have been pointed out to me. Mr. Broidie I met on the site when the building I would say was about 75 per cent complete.

Q. This is the building at Shirley Highway and Glebe Road? A. That is correct.

Q. Did you meet him more than once on the site? A. No, sir.

Q. How many times have you had occasion to be in the office? And when you speak of the office can you tell us the location of the office? [681] A. The office at 1825 Connecticut Avenue, Northwest, which was the office of Mr. Julian Savage and Motel Management, and subsequently when that office moved to the Holiday Inn at Rosslyn.

Q. How many occasions would you say that you saw Mr. Weiss or Mr. Finkelstein at that office, if you recall? A. I would say anywhere from 10 to 20.

Q. 10 to 20 times?

* * *

Q. And do you know what they were doing there? A. Yes. I asked the question because I saw a stranger in the

accounting office and I wanted to know what he was doing in there and I asked one of our employees.

Q. And what did you learn they were doing there? A. They came to sign checks for Shirley-Glebe. They had to countersign Mr. Savage's signature.

* * *

[682] Q. And up through what period of time did you see them at that office? A. Until we moved from that office. That was in July of this year.

Q. Have they likewise continued to come over to the office in Rosslyn? A. Yes, they have.

* * *

Q. On any of the occasions that you have seen Mr. Weiss or Mr. Finkelstein or on the occasion that you saw Mr. Broidie on the job or on the occasion that you saw Mr. Margolius in his office in April of 1959, will you state whether or not anyone ever mentioned that fact that an agreement had been entered into with your dad—

* * *

[683] Q —concerning the construction of anything more than a motel located at Shirley Highway and Glebe Road, and more particularly with respect to the construction of motels in the metropolitan area of the District of Columbia?

THE COURT: I will overrule the objection.

You may answer.

A. No, no one has ever told me that until I was served with the papers, and even then I didn't understand it.

* * *

[684] Q. Mr. Perper, you have stated that you were one of the signatories to the joint venture agreement entered into at Shirley Highway and Glebe Road? A. Yes, sir.

Q. Do you recall what your interest has been and is? A. Five per cent.

Q. Have you received any payments of distribution from that joint venture? A. I think I have received every one that everyone else has.

Q. Have you paid—have you listed those payments in your income tax returns over the years and paid an income tax on them? A. I certainly have.

Q. Did you ever have any agreement with your father to hold the interest in Shirley Highway and Glebe Road for him? A. No, sir.

[685] Q. Do you have an interest in the motel which was constructed, a Holiday Inn motel which was constructed at 17th and Rhode Island Avenue? A. No, sir.

Q. Do you have an interest in the motel that was constructed, at Catholic University of America? A. No, sir.

Q. Do you have an interest in the motel that was constructed at Rosslyn, Virginia? A. Yes, sir.

Q. Have you received any dividends or distributions from that motel? A. From Rosslyn?

Q. Yes, sir. A. Yes, sir.

* * *

[686] CROSS-EXAMINATION

BY MR. FRIEDLANDER:

* * *

[688] Q. And what was the purpose of talking to Margolius before it was determined that your father was interested in the site? A. To tell Mr. Margolius that if there was something that materialized, that I was to be the partner.

Q. You were to be the what? A. The partner.

Q. Partner with whom? A. With Mr. Margolius.

Q. And who else? A. That I can't tell you. He only mentioned Mr. Margolius to me.

Q. And then you came to Mr. Margolius' office and you talked to him? A. That is correct.

Q. And what did you say to him? A. Just what I have said before.

Q. Well, I would appreciate it if you would tell me.
 [689] I didn't hear it all. A. All right, sir. I told him that Mr. Perper had told me that there was a site available on the Shirley Highway, that if the site proved favorable after my father had checked it out and there was to be a motel built there, that my father wanted me to have whatever interest had been offered to him. I also told him that if it was favorable, that I would procure the franchise.

* * *

Q. What made you thin you could get a franchise?
 A. Because I felt very confident that my father could get the franchise.

* * *

[692] Q. And have you ever engaged in the building business? A. Yes, sir.

[693] Q. When was that? A. In 1953, 1954.

Q. Who were you employed by? A. I was employed by three different joint ventures to build motels.

* * *

[700] [BY MR. HILLAND]

Q. On what date did your father call you and ask you to stop to see Mr. Margolius? A. Either Monday or Tuesday of that week.

Q. And that would have been what date?

* * *

Q. He told you at that time that he had a deal pending in relation to a Holiday Inn at a site at Shirley [701] Highway and Glebe Road, did he? A. No, sir.

Q. What did he tell you? A. He said that a site was brought to him along Shirley Highway that he wanted to check out.

Q. And did he say who had brought it to his attention?
 A. He did not. He only told me that Mr. Margolius had brought some men in.

* * *

[702] Q. Do you remember what time of the day it was that you came to Mr. Margolius' office? A. I would say it was right around noontime or a little before.

Q. Did you see any other person in his office? A. As I testified before, to my recollection there was somebody in the office and I don't recall who it was.

Q. Did you talk to Mr. Ralph Deckelbaum? A. It was not Ralph. It was somebody who I have not seen many times before or since.

Q. On what other occasion did you see Mr. Margolius about the Holiday Inn at this site? A. Well, I would say specifically I talked to him when the project was almost completed. That was about the time I saw Mr. Broidie on the job. And I spoke to him again when I was up here in June of '59.

Q. Did you ever attend a meeting of the investors and promoters of the Shirley-Glebe Holiday Inn? A. No, sir.

Q. Never on any occasion? A. Never.

[703] Q. You were in Florida when you signed the joint venture agreement in this case, were you not? A. Absolutely.

Q. Did you ever contribute any money of your own to the joint venture? A. I believe that I signed a note along with several others.

* * *

[706] Q. And when and where did you first meet Mr. Broidie? A. On the job at the Shirley-Glebe construction.

Q. And I think you testified to it, but I don't remember, when and where you said you first met Mr. Finkelstein and Mr. Weiss? A. I think I said I don't believe I have ever formally met them. They have been pointed out to me when they have come into the office of Mr. Savage and Motel Management.

Q. And on what occasions were you in the office of Motel Management? A. When you say on what occasions—

Q. Yes, on what occasions? A. Well, for the last three years I have been up there pretty consistently.

* * *

[707] Q. And it's your testimony that although you were a joint venturer or partner with Mr. Weiss and Mr. Finkelstein, you never met them formally, even up to this time? A. That is correct, and that is true of other ventures that I am in.

* * *

[710] HENRIETTA SAHM

a Defendant, called as a witness, having been duly sworn, was examined and testified as follows:

* * *

[711] DIRECT EXAMINATION

BY MR. GALIHER:

Q. Mrs. Sahm, you are the former wife of Mr. Frank M. Perper, are you not? A. Yes.

Q. And you are also the mother of the defendant Alan Sahm? A. Yes.

Q. Mrs. Perper—pardon me—Mrs. Sahm, did there come a time in April of 1959 when you accompanied your husband by automobile from Florida up to Richmond, Virginia?

* * *

[712] THE WITNESS: I do not.

BY MR. GALIHER:

Q. Mrs. Sahm, do you recall meeting Mr. Margolius and Mr. Deckelbaum on the occasion that you were at the Holiday Inn in Richmond? A. I remember meeting Mr. Margolius.

Q. You don't remember Mr. Deckelbaum being there?
A. I do not.

Q. Mrs. Sahm, do you also recall on that occasion meeting either Mr. Weiss, Mr. Finkelstein, Mr. Stolar or Mr. Broidie? A. I don't remember meeting them there. I may have.

[713] Q. Do you recall that on that occasion your husband talked with Mr. Margolius and some other gentlemen? A. I know that there was a meeting there, but I don't remember—I was not at the meeting.

Q. Where were you while they were meeting? Do you happen to recall in what part of the motel you were located? A. I was in the restaurant.

Q. And thereafter did you accompany your husband back to Washington? A. I did.

Q. When did you first meet either Mr. Weiss, Mr. Stolar, Mr. Finkelstein or Mr. Broidie? A. I remember meeting Mr. Broidie on a Saturday morning. We went to the site of the Shirley-Glebe Highway. Mr. Savage, Mr. Perper, Mr. Savage's little son, and Mr. Broidie was there. I know there were other men. I don't recall whether it was Mr. Margolius or any of the other men.

Q. Do you recall how soon after the meeting in Richmond this was? A. I do not.

Q. Do you recall knowing whether or not any option had been taken on the property? A. I didn't know anything about that.

[714] Q. Do you recall whether any franchise had been secured at that time? A. No, I do not.

Q. Do you recall when you went to the site, whether or not any building had actually commenced on it. A. No, there was a house there and I remember that at the time I was told that the house would be given to Mr. Broide and Mr. Finkelstein and would be moved to a building project that they were working on in the vicinity.

Q. Do you recall when you actually saw Mr. Broidie again after that? A. Yes. I can't give you the date, but I believe that the morning that we went to the Shirley-Glebe Highway we went to an architect's office. He was the architect for Dr. Gevinson. However, he was not the architect that we employed for the project. And Mr. Broi-

die and I went to Mr. Kastner's office many times because he and I were in charge of planning with Mr. Kastner. I believe that Bernie, Mr. Margolius was there on two occasions. I am reasonably sure of it; not positive about that.

Q. When did you—did you have an occasion to talk to Mr. Weiss or Mr. Finkelstein after that? A. I remember Mr. Weiss came to my daughter's home [715] on Military Road on several occasions.

Q. What was the occasion of his coming there? A. As I recall, Mr. Weiss was supposed to bring in the investors for this project and he came there to discuss this with us because he was unable to do that, and I know that I was instrumental in getting quite a few of my friends into this deal.

Q. The Shirley Highway-Glebe Road? A. Yes, Shirley-Glebe Highway.

Q. When did you see Mr. Finkelstein next after that? A. I don't remember, but I did see Mr. Finkelstein occasionally.

Q. And did you have occasion from time to time to attend any of the meetings of the persons who were included in the joint venture? A. Not until after construction was started.

Q. But after construction was started did you attend some of the meetings that might have been held? A. Yes, I did.

Q. And did you have occasion to see Mr. Margolius? A. Yes, I did.

Q. And Mr. Deckelbaum? A. I don't remember seeing Mr. Deckelbaum. He may [716] have been there, but I really don't remember.

Q. Do recall seeing Mr. Weiss and Mr. Finkelstein? A. Yes.

Q. And Mr. Stolar and Mr. Broidie? A. Yes.

Q. On about how many occasions? A. I believe they were at every meeting.

Q. And you had occasion to talk with them from time to time? A. Yes.

Q. And did you also, Mrs. Sahm, have occasion to go out to the building as it took shape and have anything to do with what was going on at Shirley Highway and Glebe Road? A. Well, my interest in Holiday Inns were acquired by me for good consideration of my services and I spent many months on the Shirley-Glebe Highway.

Q. What did you do when you were there? A. Well, I usually came to the job before 7 o'clock in the morning. I remember on one occasion when I was in Florida for a couple of months and came back I inspected the motel and at that time I discovered—while I was gone Mr. Broidie was supposed to be in charge of inspections, and when I came back I discovered that 18 rooms had been built without [717] any closet in them.

* * *

Q. Mrs. Sahm, on any of these occasions when you were in the company of any of these gentlemen, here, the four plaintiffs, or Mr. Margolius or Mr. Deckelbaum, did anyone ever claim to you that any agreement had been entered into in April 1959 in Richmond that there was to be constructed anything more than a motel at Shirley Highway-Glebe Road, or that the metropolitan area of the District of Columbia was to be developed? A. No, sir.

* * *

[718] BY MR. GALIHER:

Q. Mrs. Sahm, what did you do, if anything, with the interest or whatever was to be received by you for your work at Shirley Highway and Glebe Road? A. I gave that to my son Alan Sahm.

Q. Do you have any connection with the interest and the money that he has been receiving from Shirley Highway-Glebe Road. A. No, sir. He files his own tax return.

Q. Mrs. Sahm, do you have any interest in the motel at Catholic University? A. No, sir.

Q. Do you have any interest in the motel at 17th and Rhode Island Avenue? A. Yes, sir.

Q. What interest do you have in the Holiday Inn at 17th and Rhode Island Avenue? A. I own five per cent.

Q. And, Mrs. Sahm, will you tell me if that interest in any way belongs to Mr. Frank Perper or anyone other than yourself? A. That belongs to me.

Q. And do you pay—do you include the income from [719] that motel in your income tax returns and pay tax on it? A. I do.

* * *

[720]

Q. Mrs. Sahm, do you recall traveling with your husband and perhaps your son Alan in connection with examining a site in northeast Washington, D. C. for a motel? A. I do.

Q. Do you have any idea when that was? A. I really don't remember the exact date, but I know it was upon information that we received about that site.

Q. And did anything happen to that site after you and your husband looked at it? A. Yes, there was a Holiday Inn motel built there.

Q. And is that the one at Catholic University? A. Yes.

* * *

[723]

ALAN SAHM

a Defendant, was called as a witness and was duly sworn

* * *

THE COURT: And what is he going to testify to?

MR. GALIHER: Mr. Sahm, as Your Honor has seen, is one of the joint venturers in the Shirley Highway-Glebe Road site. He was not present on the occasion of the Richmond meeting. He only recalls attending approximately two meetings where all of these plaintiffs were present. He has no recollection of ever hearing at any time any conversation or discussion indicating that there

was an intentment or constructing anything other than the Shirley Highway-Glebe Road venture. That is what I intend to prove.

THE COURT: I suggest this is cumulative. In the second place, the mere fact that he heard [724] nothing would not be significant because he attended only two meetings and at those two meetings nothing might have been said about it.

* * *

[730] RALPH H. DECKELBAUM

recalled as a witness, having been previously sworn, was examined and testified further as follows:

[731] DIRECT EXAMINATION

BY MR. HILLAND:

Q. Mr. Deckelbaum, can you fix the exact date of the meeting in Richmond, Virginia, among the plaintiffs, Mr. Frank Perper, Mr. Margolius, and you? A. Yes, sir.

Q. And how can you fix it—what is that date? A. April 26, 1959.

Q. And how is it that you can fix it exactly as of that date? A. Because on this particular trip down I was unable to eat. I was Orthodox at the time—I am Conservative Judaism now—and I observed the Passover holiday strictly and I did not eat any food on that particular trip.

THE COURT: Just a moment. I hope I am not too ignorant, but Passover does not require fasting, does it?

THE WITNESS: No, sir, but you cannot partake of food outside of a place where it is prepared in the absence of leavened bread.

THE COURT: Oh, yes.

Q. Now, did you see Frank Perper in Washington on April 8? A. Yes, sir.

[732] Q. Where? At the Willard Hotel.

Q. And what was that occasion? A. There was a

meeting for the Holiday Inn of Durham, North Carolina, held with the partners at the Willard Hotel.

Q. And did you see him in Washington on April 9th?

A. Yes, there was—

Q. What was that occasion? A. There was a meeting of the Holiday Inn of Richmond venture, which was held also at the Willard Hotel on the second floor.

Q. Was Mrs. Sahm with him at that time? A. Not that I—you mean at the two meetings?

Q. Yes. A. Not that I recall.

Q. Do you know how he came to Washington on that occasion? A. It is my recollection he flew up for those meetings, flew to Washington for those meetings.

* * *

[733] A. * * * Mr. Perper then announced that he had the right to protect—he had the protection and the right to develop the entire area, that he would take everyone else in if he ever built another motel, except for one person.

Q. And did he name that person? [Tr. 734] A. Yes, sir, Mr. Margolius.

* * *

[740] MR. GALIHER: Your Honor, there is one other exhibit I would like to introduce which has not been introduced. I have it here, if I may.

You will recall that the plaintiffs introduced the Catholic University Shrine joint venture agreement dated September 1st, 1961 as Exhibit 28. I would like the Court's permission to introduce as the next numbered exhibit—and of course Mr. Friedlander [741] will have an opportunity to comment on it if he chooses and Mr. Hilland, who is continuing with his argument—a deed of trust, photostatic copy of a deed of trust recorded June 7, 1961 in Liber 11611 at Folio 315 in the land records of the District of Columbia. It represents the deed of trust for the Shrine site at Catholic University.

THE COURT: Now what is the purpose of introducing it?

MR. GALIHER: The purpose is to show the obligation, may it please Your Honor, under this deed of trust of these persons, Mrs. Perper, Mr. Savage--

THE COURT: Who are the parties to the deed of trust?

MR. GALIHER: Mrs. Sahm and Mr. Frank Perper, Mr. Savage and his wife, Mr. —

[742]

* * *

THE COURT: This is a certified copy, so there is no question about its authenticity. This is a deed of trust between Frank Perper and his wife and several others, as parties of the first part, covering, you say, the Baltimore-Washington Parkway site?

MR. GALIHER: No, I say the Catholic University site, Your Honor, the Shrine site.

* * *

[743] MR. GALIHER: The purpose of this document, may it please the Court and gentlemen, is to show the obligation assumed by the persons who are signatories to the deed of trust, under its terms and conditions, as a result of the construction of the motel at the Shrine of the Catholic University.

THE COURT: That is the only purpose?

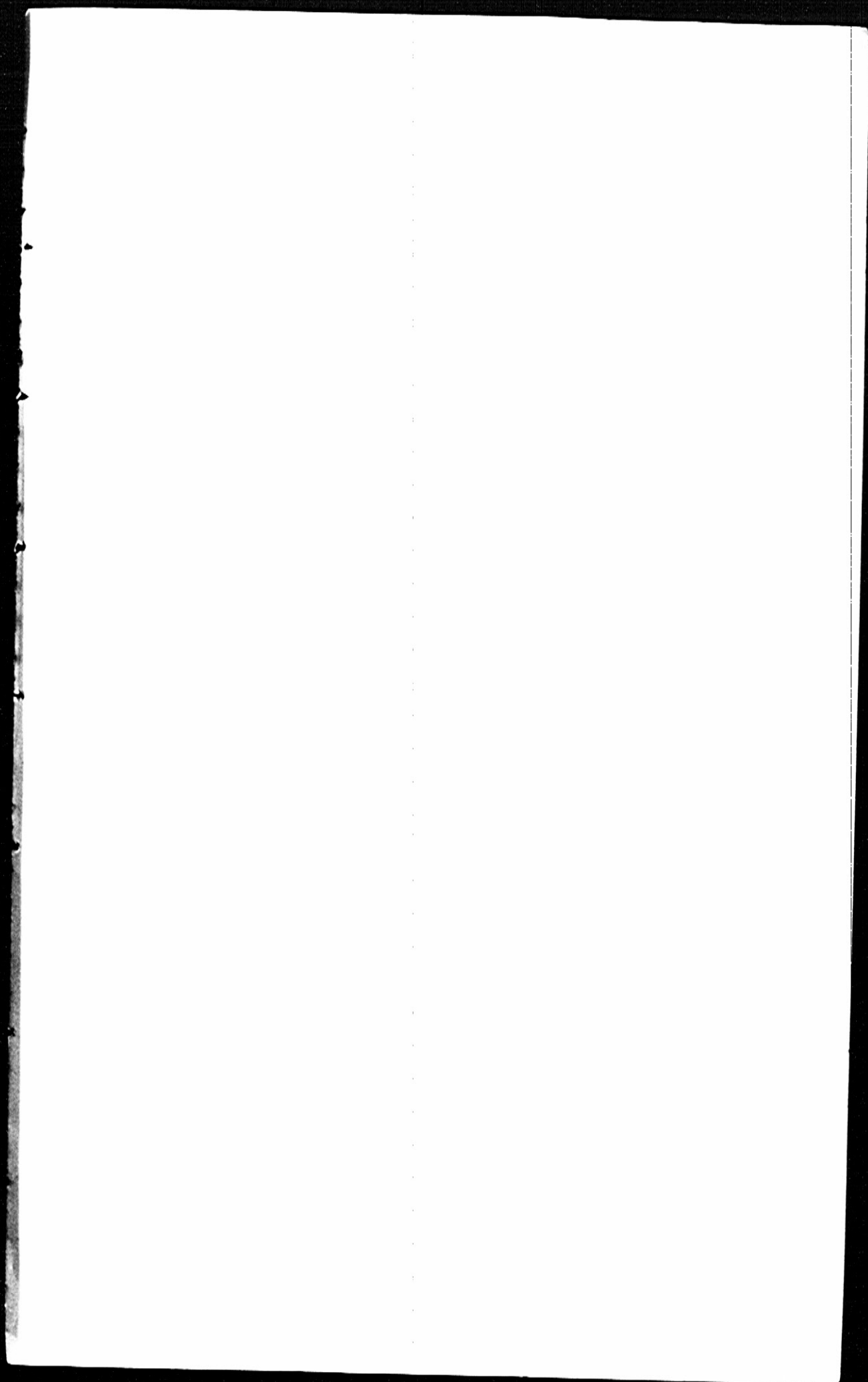
MR. GALIHER: Yes, sir.

THE COURT: It is only for that limited purpose?

MR. GALIHER: Yes, sir.

THE COURT: Let it be admitted.

* * *





Holiday Inns

OF AMERICA, INC.

EXECUTIVE OFFICES: 3736 LAMAR AVENUE • P. O. BOX 7137 MEMPHIS, TENNESSEE

ARLINGTON, VIRGINIA

License Agreement

MAR 24 1966

ROBERT M. STEARNS, Clerk

Retyped in name of Frank Perper, 11/25/61

THIS AGREEMENT entered into at Memphis, Tennessee, this 19 day of January, 1966, by and between HOLIDAY INNS OF AMERICA, INC., a Tennessee corporation, with principal office at Memphis, Tennessee, (hereinafter referred to as "Licensor"), and FRANK PERPER

whose address is 5319 Nebraska Ave., N.W., City of Washington, State of D. C. (hereinafter referred to as "Licensee"), and 9101 E. Bay Harbor Drive, Apt. 301, Miami, Florida

WITNESSETH: That,

Licensor has developed and perfected a plan or system (hereinafter referred to as the "System," or as the "Holiday Inns System") for providing to the public, and especially to the motoring public, an inn service, including lodging, food and other accommodations, of distinctive nature, of high quality, and of other distinguishing characteristics, all as initially placed in operation by Licensor and provided under the name "Holiday Inn," in and around Memphis, Tennessee. The distinguishing characteristics of said System, and of the inn service provided pursuant thereto, include (but are not limited to) the following:

- (1) The words "HOLIDAY INN," "Holiday Inn Hotel," "Holiday Inns," "Holiday Inns of America," or other combinations of said words, either alone, or in combination or association with the color scheme or pattern, building design, insignia, slogans, signs, emblems, trade names, service marks, or with the inn service, now or hereafter provided or used by Licensor at or near Memphis, Tennessee, or as part of the said System, or in association with the idea of a nationwide service of inns all providing standardized, high quality, distinctive inn service;
- (2) A distinctive and readily recognizable design and construction of the structures comprising such inn and including the restaurant and other supplementary buildings;
- (3) The color scheme, pattern and design, and the color combinations of the exteriors and of the interiors of said structures, and on certain of the furnishings therein;
- (4) Appearance of certain of said structures and the distinctive trade marks, service marks, design, slogans, name and matter now or hereafter displayed thereon, or used as part thereof;
- (5) The trade marks, trade names, service marks, insignia, emblems, signs, designs, color and patterns, and other distinctive features, as now or hereafter in use at Holiday Inns in and around Memphis, or as part of the System, both as identifying the System of Inns, and as identifying the type, character, and standard or quality of service which the public may expect to receive at such inns;
- (6) Style, color and character of equipment, furnishings and appliances used in and about the inn and the equipment and supplies bearing the name "Holiday Inn," and/or other distinguishing characteristics;
- (7) Methods of operation, advertising service and publicity, and credit card service when established;
- (8) A standardized, uniform (or as nearly so as may be) inn service, identified with the words "Holiday Inn" and with the other distinguishing features, trade marks, and service marks of the System, for providing lodging, food and other accommodations and conveniences, parking for automobiles, close proximity to filling station facilities, and for providing such inn service in accordance with fair and ethical policies and practices, and in accordance with high standards of efficiency, courtesy, and cleanliness, and of a distinctive nature and of high quality.

The Licensee desires to be licensed to provide the same inn service of the same distinctive nature and high quality and of the same distinguishing characteristics, as established and provided by Licensor, under and using the same trade marks, service marks, color pattern and scheme, signs, designs, and other distinguishing characteristics of the System, and as established and provided by Licensor. It is the intention of the parties that the inns to be operated by the Licensee under this Agreement, together with inns now or hereafter operated by Licensor and those operated or to be operated by other licensees under similar agreements, will form a National System of such inns. The success of such National System is dependent upon the continuing good reputation of each and every inn operated within the System and upon the continuing good will of the public toward the name "Holiday Inn," "Holiday Inn Hotel," "Holiday Inns" and "Holiday Inns of America," and towards the System and its distinguishing characteristics. The success of both parties to this Agreement, and of other licensees is directly affected by the business conduct of all licensees using the System. The Licensee, therefore, recognizes that adherence to the terms of this Agreement is a matter of mutual importance and consequence to Licensee, to Licensor, and to all other licensees. Accordingly, IT IS MUTUALLY CONVENANTED AND AGREED as follows:

FIRST: Licensor hereby grants to Licensee, subject to the terms and conditions hereof, a non-assignable, exclusive license to use said System in the construction and operation of one or more Holiday Inns within, and only within, the metropolitan area or areas, described as follows (hereinafter referred to as the "Licensed Territory"):

The Licensed Territory shall be only that specific site and location known as intersection of Glebe Road and Shirley Highway, Arlington, Virginia.

It is understood and agreed that the fees and royalties required herein are for the operation of the Holiday Inn at the above specific location only, and as other Holiday Inns are developed, other fees and royalties shall become due and payable.

Licensor will not approve a site under any other license and will not itself operate a Holiday Inn, within said territory without Licensee's approval, so long as Licensee shall perform the agreements on its part herein contained.

SECOND: Licensee does acknowledge and recognize the Licensor's interest in, and exclusive right to, said System and to its distinguishing characteristics now, or from time to time hereafter, used as a part of, or in connection with or applicable to, said System, and in all service marks, trade marks, copyrights, service mark or trade mark registration, trade names, and patents now or hereafter applied for or granted in connection therewith, and also the exclusive right of Licensor to use and/or grant the right

PLAINTIFFS' EXHIBIT 1

to others to use the name "Holiday Inn" in connection with the said System; and Licensee further recognizes and acknowledges the exclusive right of Licensor to grant this license and to grant licenses to others to use said System in the conduct of "Holiday Inns" under the said System; Licensee agrees neither to infringe upon, use or imitate the said System, or any of its distinguishing characteristics as above set forth, except under written license from the Licensor; and Licensee does hereby accept this license, and does covenant and agree to conduct the operation of inns in the licensed territory under the System, and in accordance with the terms and provisions of this license and of the Rules of operation of said System; Licensee does further covenant and agree as follows:

(a) To maintain a high moral and ethical standard and atmosphere at Licensee's "Holiday Inns"; to comply with all local, State, and Federal laws, ordinances, rules and regulations pertaining thereto; to maintain its premises and accommodations in a clean, safe and orderly manner; and to provide efficient, courteous and high quality Holiday Inn System service to the public, and to furnish inn accommodations, services and conveniences of the same quality, type and distinguishing characteristics, as provided at the "Holiday Inns" in and around Memphis, to the end that the inns operated by Licensee under this agreement shall each help to create good will among the public for "Holiday Inn" System inns as a whole, and that Licensor, Licensee, and each member of said System shall be benefited, and the public assured uniform efficient, courteous, high quality service on a standardized national basis;

(b) To pay to Licensor forthwith as a part of the consideration for the execution of this agreement by Licensor and in addition to all other sums required to be paid by Licensee, the sum of TEN THOUSAND AND NO/100 (\$10,000.00) Dollars

(c) To build at least one Holiday Inn within the licensed territory, and such additional Holiday Inns as may be deemed by it necessary and desirable (but if the licensed territory shall consist of or include a metropolitan area of 250,000 population or more, according to the 1950 census, then to build at least one Holiday Inn to serve each United States Highway within each such metropolitan area except that in no event shall Licensee be deemed to have agreed to build more than one room for each 2,000 population within its territory according to the 1950 census; provided, however, that the Licensee shall not be required to build upon any particular United States Highway, or to build any particular number of inns hereunder, if at the time Licensee presents a Market Analysis of a nationally recognized Market Analyst satisfactory to Licensor, showing that such construction is not justified by market conditions. In the event of dispute between Licensee and Licensor as to any matter arising from such survey or the absence thereof, or if Licensor disagrees with such survey, then Licensor and Licensee agree to accept the recommendations of the Executive Committee of Holiday Inns National Association with respect thereto. Each inn shall provide a minimum of fifty rooms, each shall be designed and built substantially in accordance with the plans and specifications used by Holiday Inns at Memphis and such modifications thereof as Licensor may recommend (subject only to necessary variations required by local building and other applicable laws and regulations and by local conditions) and each shall exhibit the distinctive characteristics of said System in such manner as to be readily recognizable by the public as a part of said System; the location, plot plan, and the detailed plans and specifications, for each such inn shall be submitted to and approved by Licensor prior to the commencement of work; Licensee agrees that Licensee will not, directly or indirectly, own any interest in, operate, or be in any manner connected with or associated with, any inn, hotel or motel, within the licensed territory, during the period of this license, except Holiday Inns licensed under this License;

(d) To commence the construction of the first of such inns on or before July 15, 1960

and to complete such construction and commence operation under the System on or before January 15, 1961;

and thereafter to commence construction of at least one additional inn within each yearly period following the date first mentioned in this Part "Second" "d" and to complete the same within six months after commencement of construction, until the entire number of inns which Licensee agrees to build under Part "Second" "(c)", or such lesser number, if any, as may be justified in the market analysis shall have been completed (except as any of such dates or times may be extended by mutual agreement and except for delays occasioned by war, acts of God, and matters beyond Licensee's control); if the Licensee does not commence construction within the Licensed Territory by the dates required hereunder, or having so commenced does not prosecute same with reasonable diligence and complete the same by the date required hereunder, this license and all rights hereunder, may at Licensor's option be cancelled as to such territory, and the consideration paid for this license shall be forfeited to Licensor, time being of the essence. In the event of such cancellation Licensor shall have the right to issue an additional license or licenses for said territory covering the inns Licensee has agreed to build but has not built hereunder; but no such additional licenses shall be granted for the construction of any inn to serve a highway served by any inn constructed by Licensee under this agreement. Licensee's right and license to operate any "Holiday Inn" then built and in operation by it shall not be affected, provided Licensee shall not be in violation of any other provision of this Agreement;

(e) To pay to Licensor at Memphis, Tennessee, within fifteen (15) days after the end of each month, commencing with the month in which Licensee opens his Holiday Inn and continuing for the life of this agreement, as a royalty or further consideration for this license, an amount equal to ten (10¢) cents a night times the total number of rooms in Licensee's Holiday Inn or Inns within the Licensed Territory.

(f) To pay to Licensor at the same time an additional sum in the amount of five (5¢) cents per room per night (or such greater sum as shall be, from time to time, required by Licensor), but only upon recommendation of the Advertising Committee of Holiday Inns National Association, approved in writing by a majority of the members of such association, or by a majority of those members present at a duly called meeting of the Association, as a payment upon national advertising expenses, all of which sums payable under this sub-paragraph (f) shall be deposited by Licensor in a separate account under its control but designated "Holiday Inn National Advertising Account" to be used by Licensor solely for the publication and distribution of directories, pamphlets and other printed advertising matter, for radio, T-V, magazine, newspaper and other forms of advertising media, and for technical and professional advice in connection therewith; for advertising agency commissions; and for any other advertising, promotional or related purposes or materials, which are approved by a majority of the Advertising Committee of Holiday Inns National Association as desirable to advertise and promote "Holiday Inns" nationally; each Licensee is responsible for Licensee's own local advertising;

(g) To feature in the operation of all of Licensee's inns covered by this license, and in all advertising matter, the words "Holiday Inn," together with the distinguishing characteristics of the System, in substantially the same combination, arrangement, and manner as displayed and used in the "Holiday Inns" in and around Memphis, so that Licensee's inns will be readily recognizable by the public as inns of the same appearance as the "Holiday Inns" constructed in and around Memphis, Tennessee, and readily recognizable by the public as part of the national System of "Holiday Inns"; to erect a large sign, using neon lighting if allowed by local law, of the same design, color scheme and pattern and appearance as used by "Holiday Inns" in and around Memphis, Tennessee (subject only to such modifications, if any, as may be required by local law) and using the words "Holiday Inn," the same star, and the same other distinctive, distinguishing features and characteristics on said sign; to construct on the exterior of Licensee's inns using the distinctive color scheme and pattern of the System, the words "Holiday Inn" and the service marks, trade marks, slogans, insignia, and other identifying distinctive features as now or hereafter used upon "Holiday Inns" at Memphis as aforesaid; to employ such service marks, trade marks, distinctive color scheme and pattern in all exterior and interior decorating, and on all stationery, linens, towels, furniture, furnishings, advertising matter, signs or other articles, in substantially the same combination, arrangement and manner as used in said "Holiday Inns" in and around Memphis; if in Licensee's territory, there be a claim of prior use of the word "Holiday" in the name of any hotel, motel or inn, then Licensee shall so use Licensee's own name, and such combinations and modification of "Holiday Inn" service marks, trade marks, trade names and slogans, as to clearly avoid any possible confusion between the Licensee's "Holiday Inn" and any such claimant; and Licensor shall defend the name "Holiday Inn" and the System against imitations or infringements, except that Licensee shall defend against any claim of prior use within the Licensed territory; and both other parties shall make every effort to protect, maintain and to advance the name "Holiday Inn," and the distinguishing characteristics in connection therewith, and the service marks, trade marks, trade names and slogans, as standing for, and as having a secondary meaning of, inns operated under the said System only;

(h) That Licensee, in the use of the name "Holiday Inn," the service marks, trade marks, color scheme and pattern, signs and the System, and in Licensee's own advertising, shall identify Licensee as being the owner and operator of Licensee's particular "Holiday Inn" or "Holiday Inns" under license from Licensor; that the parties hereto are completely separate entities, are not partners, joint adventurers, or agents of the other in any sense, and neither has power to obligate or bind the other; that Licensee shall not use the words "Holiday Inn," or any combination of such words, in its corporate name or partnership name, if a corporation or partnership, nor allow the use thereof by others; that Licensee will sell or provide no products or services under the said service marks or trade marks, except inn service of lodging, foods, and other accommodations and conveniences for the public, of the same nature, type, quality and distinguishing characteristics as are sold or provided, or may hereafter be sold or provided at the "Holiday Inns" in and around Memphis Tennessee;

(i) To use every reasonable means within the Licensed Territory to encourage the use of "Holiday Inns" on a national basis by the traveling public;

(j) To promote and endeavor diligently to secure desirable applications for Holiday Inn National System Credit cards, in a conscientious effort to create new and reliable patrons of "Holiday Inn";

(C) In the event Licensee shall violate substantially and materially any term, provision, or agreement herein contained, and such violation continues for thirty days after written notice from Licensor thereof, or in the event of the insolvency, incapacity, or dissolution of Licensee or the appointment of a Receiver or Trustee for the business of Licensee, or if Licensee be adjudged a bankrupt, then the Licensor, in such event, and without further demand or notice, may, at Licensor's option, immediately declare this agreement and license and all rights and privileges hereunder, cancelled and terminated, and Licensee shall be liable in damages to Licensor for all amounts due on the effective date of such termination, as well as for an amount equal to one-half of the aggregate of such payments as would have become due under Part "Second" "(e)" and "(f)" of this Agreement between the effective date of such termination and the next occurring "free termination date";

(D) If at any time more than four years after the date of this Agreement the average scheduled room rental rates of all Holiday Inns shall have risen more than fifty (50%) per cent above, or decreased more than fifty (50%) per cent below, the average scheduled room rental rates of Holiday Inns in operation on January 1, 1955, then in that event the payments required under Part "Second" "(e)" hereof shall be increased or decreased (as the case may be) in the same ratio as such increase or decrease in average room rental rates. If, upon demand, Licensee shall fail to pay any such increase, Licensor may at its option terminate this License by giving six (6) months prior written notice.

SIXTH: In the event of termination of this agreement under Part Fifth all rights of Licensee hereunder shall thereupon terminate, and Licensee shall immediately thereafter cease to use, by advertising or otherwise, directly or indirectly, the said System, or any parts thereof; and without limiting the generality of the foregoing, the Licensee shall cease to use, and shall withdraw from use, the words "Holiday Inn" or any combination of words similar thereto or suggestive thereof, the trade names, trade marks, service marks, color schemes and patterns, slogans, designs, signs, emblems, of the System or in any wise similar thereto or suggestive thereof; and the Licensee shall withdraw from use, and cease to use, all signs, furniture, furnishings, advertising matter, stationery, forms, or any other articles which display the words "Holiday Inn", the trade names, trade marks, service marks, color schemes or patterns, slogans, designs, signs, or emblem, of the System, or identified with the System, or similar thereto, or suggestive thereof; and Licensee agrees, upon any such termination, to cease and refrain from holding Licensee out to the public in any way as a member of the System, or as a Licensee or operator of a "Holiday Inn" and to distinguish Licensee's inns thereafter so clearly from those of the Licensor, and from those within the System, as to avoid all possibility of any confusion by the public. Licensee agrees that the Licensor shall be entitled to injunctive and equitable relief for any violation of this Part Sixth of this agreement, and Licensee agrees to pay all costs and expenses, including reasonable attorney's fees, incurred by Licensor in enforcing this Part Sixth of this agreement, or any other part of this agreement, as a result of Licensee's violation of, or default in performing, this Part Sixth, or any other part, of this agreement.

SEVENTH: Whenever under the terms of this Agreement, notice is required, the same shall be given in writing and signed by or on behalf of the party giving the same, and shall be given personally or by depositing the same in the Registered Mail, enclosed in a sealed wrapper, postage prepaid, and addressed to the party for whom intended. If said notice be intended for Licensee, the same shall be addressed to Licensee at the address hereinabove set out. If said notice be intended for Licensor, it shall be addressed to Licensor at 4935 Summer Avenue, Memphis, Tennessee, or at such other address as may be designated in writing by Licensor. Any notice so mailed shall for all purposes be deemed to have been given to and received by the party for whom intended on the date said notice was so mailed.

EIGHTH: No delay, waiver, omission or forbearance on the part of the Licensor to exercise any right, option, duty or power arising out of any breach or default by Licensee, or by any other licensee, of any of the terms, provisions or covenants hereof, shall constitute a waiver by Licensor to enforce any such right, option or power as against Licensee, or as to subsequent breach or default by Licensee.

NINTH: Any provision of this agreement prohibited by law, or by court decree, in any locality or state, shall be ineffective to the extent of such prohibition without in any way invalidating or affecting the remaining provisions of this Agreement, or without invalidating or affecting the provisions of this Agreement within states and localities where not prohibited by law or court decree.

TENTH: This Agreement and all rights hereunder may be assigned and transferred, by Licensor, and shall enure to the benefit of the Licensor's successors and assigns.

ELEVENTH: It is stipulated that this Agreement has been negotiated in, and finally executed within, the State of Tennessee, and shall be construed according to the laws of that State.

TWELFTH: Licensee and other licensees, present or future, and the Licensor shall be eligible for membership in Holiday Inns National Association, the primary purposes of which shall be to consider and discuss common problems relating to the operation of "Holiday Inns" and to make recommendations to the Licensor with respect to Rules of Operation, advertising expenditures, and other appropriate matters.

The Association may meet annually, may adopt such by-laws as are deemed appropriate and not in conflict with this or other license agreements, and may elect officers, and nominate for appointment by Licensor, such committees as it finds advisable, including an Advertising Committee, and a Committee on Rules. All Committee recommendations shall be transmitted to Licensor and accepted by it as expressing the consensus of opinion of members of the Association on matters within the scope of the particular Committee. In the event the Association is inactive, or fails to meet annually, or fails to appoint the Committees as aforesaid, or in the event any Committee having been appointed fails to function, then Licensor may without prior nomination by the Association appoint such Committee, which Committee may make the recommendations referred to in this Agreement, and shall have the right to function in all respects unless and until the Association Committee shall actively function.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement at Memphis, Tennessee, on the day and year first above written.

(Licensee)

(SEAL)
By _____ (SEAL)
ATTEST:

(Licensor)
HOLIDAY INNS OF AMERICA, INC.
By _____ (SEAL)
Chairman of the Board or President
Executive Vice President
ATTEST:

WITNESS

Secretary

Assistant Secretary

GUARANTY OF LICENSEE'S UNDERTAKINGS

In consideration of, and as an inducement to, the execution of the above Agreement and License by Holiday Inns of America, Inc., the undersigned does guarantee unto Holiday Inns of America, Inc., that the above named Licensee will perform during the four years next following the date of the above Agreement, each and every covenant, payment, agreement and undertaking on the part of Licensee contained and set forth in said Agreement.

IN WITNESS WHEREOF, the Undersigned has hereunto affixed the signature and seal of the Undersigned the same day and year as the above Agreement.

ROBERT M. STEARNS, Clerk

MAR 28 1960

FILED

(SEAL)
GUARANTOR

(k) To permit regular inspection of all accommodations, facilities, and procedures by, accredited Holiday Inns inspectors, for compliance with this agreement, and to give free lodging to any such inspector when on official duty for such time as may be reasonably necessary;

(l) To observe strictly the Rules of Operation as now established by Licensor, or as revised or amended by Licensor from time to time hereafter, the right of revision and amendment being reserved by Licensor; Licensor recognizes that the wisdom and practicality of rules for the operation of the System may require amendment from time to time as a result of experience and it, therefore, agrees to appoint, as set forth in Part Twelve hereafter, a Committee on Rules of Operation, and agrees not to revise or add to the Rules of Operation except by action of Licensor's Board of Directors, following recommendation of a majority of such Committee on Rules of Operation;

(m) That this license is not exclusive, except in the Licensed Territory and under the conditions imposed herein, is personal to the Licensee, and is non-transferable without the written consent of Licensor; that in the event Licensor shall consent, in writing, to the transfer hereof, the transferee shall be bound by each and all covenants and conditions herein contained and shall have no right to further transfer of this license, except with the written consent of Licensor; if this license shall be assigned by Licensee as an individual, Licensor hereby agrees that, upon request of Licensee, it will approve assignment to a corporation of which Licensee shall be an officer, director, and a substantial stockholder.

(n) To file with Licensor not later than thirty (30) days following the close of each calendar quarter of each year during the life of this Agreement a statement of operations, showing the results of operations of Licensee's Holiday Inns during the calendar quarter preceding each such required filing date, and such other reports as Licensor may from time to time require, on forms to be prescribed by Licensor.

THIRD: Licensor covenants and agrees:

(A) To make available to Licensee the privilege of consulting with Licensor's officials and staff upon problems relating to design, construction and operation of "Holiday Inn" hotels, so that Licensee will have available to it the experience of Licensor, and of other licensees relating to such problems;

(B) To supply as a guide to Licensee a copy of a set of plans and specifications for the erection of a "Holiday Inn"; to approve or disapprove each particular site, when proposed by Licensee;

(C) To supply sample plot plans and typical layouts;

(D) To examine, and to make recommendations in connection with approving the same, Licensee's detailed plans, specifications, and proposed plot plans;

(E) To make available to Licensee, upon request, all such information as Licensor may have from time to time with respect to prices of equipment, furniture, furnishings and supplies;

(F) To provide 30 days training in "Holiday Inn" methods to a manager, a housekeeper and a restaurant manager selected by Licensee. All such training shall be provided at or near Memphis (or such more convenient place as Licensor may designate), and Licensee shall be responsible for trainees' wages, room, board and traveling expenses during the training period;

(G) To make available to Licensee such information as Licensor may have as to financing (but Licensor does not in any way guarantee to obtain or provide mortgage financing for Licensee);

(H) To use every reasonable means of assisting Licensee to install methods of inn operation as conducted at "Holiday Inns" at or near Memphis, and under the System;

(I) To encourage the use of "Holiday Inns" on a national basis by members of the public;

(J) To issue, from time to time, for distribution among travelers and "Holiday Inn" customers, a directory containing the names and addresses of all Licensees in good standing;

(K) To maintain supervision over Licensees, to assure compliance with "Holiday Inn" standards as established in the System from time to time, and in the Rules of Operation, and for that purpose to have traveling inspectors visit each Licensee a minimum of twice a year;

(L) To provide Holiday Inns National Association, with necessary and appropriate office space, at Memphis, rent free for a national office for the Association;

(M) To make available to Licensee, through sales or otherwise, at prices to be determined at the time, "Holiday Inn" System signs, decalcomania, forms, stationery, bulletins and procedures which at the time are being supplied by Licensor for use in the conduct of "Holiday Inns"; and to furnish recommendations for standardizing signs, letterheads, registration cards, statements, rate folders, and other similar material;

(N) To expend the sums received from Licensee pursuant to Part "Second" (f), of this agreement for the publication of a directory, and for national advertising and promotion, and as provided or authorized in the said Part "Second" (f).

FOURTH: Licensor expressly reserves the right to revise, amend and to change, from time to time, the said "System" or any part thereof, but agrees not to revise or amend the Rules of Operation except by action of its Board of Directors, following recommendation of a majority of the Committee on Rules of Operation appointed as set forth in Part Twelve. Such "System" as so changed, revised or amended, from time to time, shall for all purposes be deemed to be the "System" referred to in this Agreement. Any and all improvements in said System developed by Licensor, or other licensees, shall be and become the sole and absolute property of Licensor, and Licensor may incorporate the same in said System and shall have the sole and exclusive right to copyright, register and/or patent such improvements in Licensee's own name, and Licensee shall have no right to copy, register and/or patent such improvements, provided, however, that in the event of the termination of this License, Licensee may continue to use any improvement which Licensee has himself developed, provided Licensee does not represent or indicate thereby that he is a Licensee or user of the System, or operator of a "Holiday Inn".

FIFTH: This agreement and license shall be in effect for a term commencing this date and continuing until terminated under Part Second "(d)" for failure to commence or proceed with construction or by one of the following acts or events:

(A) Licensee shall have the right to terminate this Agreement at any time upon giving six months prior written notice to Licensor; but, if such notice shall be given to take effect other than on a date four exact years, or any multiple of four exact years, from the date named in Part "Second" "(d)" as the date on or before which construction of all "Holiday Inns" licensed by this agreement is to be completed (which said four-year or multiple of four-year dates are hereafter referred to in this Part "Fifth" as "three termination dates"), then the Licensee shall pay with such notice an amount equal to one-half of the aggregate of such payments as would have become due under Part "Second" "(c)" and "(f)" of this Agreement between such effective date of termination and the next occurring "three termination date"; it is agreed that the above specified times are of the essence of this Agreement;

(B) After twenty years either party may terminate this agreement on any anniversary date hereof by giving nine months prior written notice; provided that Licensee shall have the option to renew this license on a year to year basis thereafter but any such renewal shall be upon all of the terms and provisions of license agreements then being used by Licensor;

Arlington, Virginia

ADDENDUM TO LICENSE AGREEMENT

For and in consideration of the mutual benefits to each party and other considerations hereinafter set out, the parties do agree that the additional provisions shall become a part of this License Agreement, and in the event of any conflict with the standard License Agreement form the provisions of this Addendum shall prevail.

13. Licensee shall not lease to or hire or retain in any manner for the management of any Holiday Inn within the Licensed Territory any person or firm who is in a similar or competitive type business or organization.

14. The owner or lessee of any Holiday Inn built or operated under this License Agreement shall not be an associate or associate member or affiliated in any manner with any organization, company or group, the primary purpose of which, either express or implied, is to set a standard for motels or hotels and/or to request or require its members to refer business to other members of that organization, company or group.

15. If Licensee at some future date transfers the License Agreement to a corporation in which the present Licensee does not have controlling interest, Licensors shall have the right to terminate this License Agreement if it so chooses. Licensors shall also have the right to terminate this License Agreement if at any time the controlling interest in the corporation to which this License Agreement may be transferred shall be sold or disposed of by the present Licensee.

16. Licensee agrees that if at any time in the future the License Agreement is transferred to a corporation and said corporation shall attempt to raise or secure funds by sale of stock or securities convertible into stock that said plans must be approved by Licensors prior to any offering or sale.

17. Licensee agrees that it will not begin construction of its Holiday Inn until complete plans and specifications have been examined and approved by Licensors.

18. Licensee agrees that whether he operates the restaurant himself or whether it is leased or sublet to others, Licensee agrees to be responsible for the restaurant in the proposed Holiday Inn, to maintain accommodations at an early hour for departure at breakfast and also to remain open a reasonably late hour for arrivals in the evening. Licensee further agrees to be responsible for the restaurant to furnish room service to all rooms of the Holiday Inn, to display Holiday Inn advertising material exclusively, such as the Directories, placemats, napkins, etc., and to conduct the entire operation of the restaurant compatible with and to the best interest of the Holiday Inn System.

WITNESS:

Nancy Biddle

ATTEST:

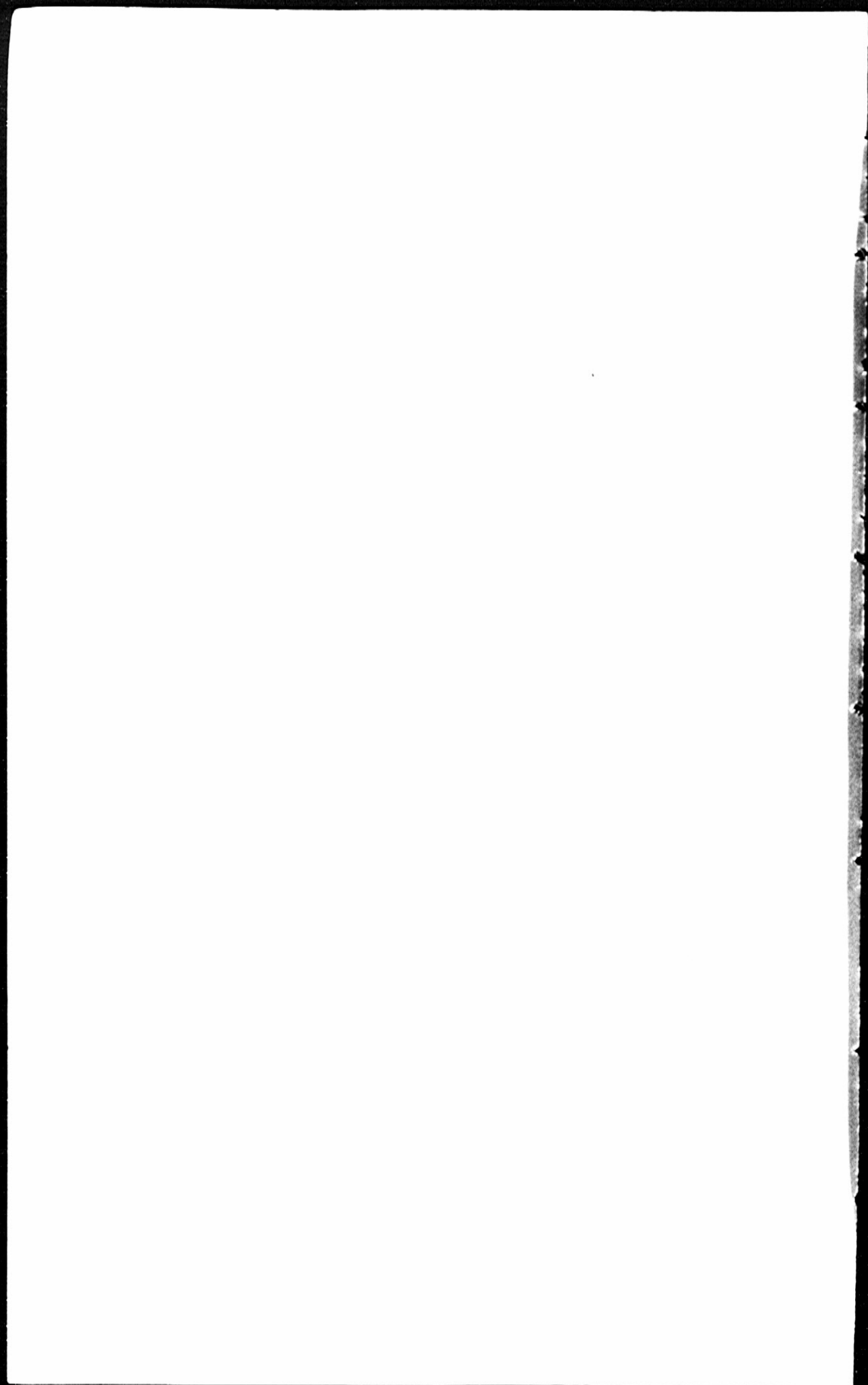
W. R. J. J. J.
Assistant Secretary

Frank Perper
Frank Perper

HOLIDAY INNS OF AMERICA, INC.

By William B. Watson
Exec. Vice President

Agreement with Norman A. Shapiro and Whitestone Motel Inn, Inc., has been attached to the re issued franchise. (Agreement dated June 30, 1960)



PLAINTIFFS' EXHIBIT 4

JULIAN SAVAGE AND COMPANY
815 - 15th Street, N.W.
Washington 5, D.C.

June 6, 1959

Mr. Kemmons Wilson
Chairman of the Board
Holiday Inns of America, Inc.
3736 Lamar Avenue
P. O. Box 7127
Memphis, Tennessee

Re: Shirley Highway Site

Dear Mr. Wilson:

Messrs. Robert Weiss and Jacob Broidie came away from their meeting with you with the understanding that the Holiday Inns of America, Inc. would hold a franchise for us for the site at the corner of Shirley Highway and Glebe Road in Arlington, Virginia. The information which we have been able to obtain regarding the South Gate motel across the street is that their recent occupancy rate has been approximately 90% and that they anticipate an average occupancy of 70% for the year.

We have had preliminary plans and specifications prepared and will submit them for a loan commitment on Monday. As quickly as possible, which should be before July 1, we should be in a position to apply formally for the franchise.

Will you kindly confirm to us that you are holding the franchise for this site together with the area, except as to your company owned motel site, pending our formal application.

Very truly yours,

JULIAN SAVAGE AND COMPANY

cc: Bernard Margolius /s/ Julian Savage
Robert Weiss

PLAINTIFFS' EXHIBIT 5

January 9, 1962

Mr. Frank M. Perper
c/o Julian Savage
1825 Connecticut Avenue, N.W.
Washington, D.C.

Dear Frank:

At the time of the development of the Holiday Inn in Arlington, I advised you, as I did others, that it was my opinion that the right to franchises in the Washington area was to be held by the Holiday Inns of America for us and not just for you. When Bob Weiss went to Memphis originally, it was the understanding at that time that the development of this area within a radius of a certain number of miles would be reserved to us, except for any motel which the home company wanted to build as their own. You will recall, I am sure, that Bob Weiss came to me with the Arlington deal and asked me to develop it with him, at which time I asked you to come in with me. I invited Weiss and the other men down to Richmond where I introduced you to them and we discussed the matter.

I have always known that the development of the Washington area was reserved to us as a result of the building of the Holiday Inn at Arlington. I have now found in my file a letter sent by Julian Savage to Kemmons Wilson, copy to me, confirming the fact that franchise for this area was to be held by us. Speaking for myself, at least, I feel that I am entitled to participate, on the same basis which you and your associates are participating, in motels which are being franchised in this area. When Arlington was developed it was with the understanding that there would be other Holiday Inns in the area and that we would have the right to build these. Of course, when Catholic University was planned as a Holiday Inn and now College Park and others, I was dealt out of the deal by you and

Julian. I am sending you a photostat of the copy of the letter which was sent by Julian to Holiday Inns of America. (The underscoring is mine)

I am writing this letter to you not to stir you up, but because I have found the letter which confirms what I have been contending. I would like to sit down with you and discuss this at an early date.

Very truly yours,

Bernard Margolius

PLAINTIFFS' EXHIBIT 6

JULIAN SAVAGE AND COMPANY

815 15th Street, N. W.

Washington 5, D. C.

June 6, 1959

Mr. Kemmons Wilson
Chairman of the Board
Holiday Inns of America, Inc.
3736 Lamar Avenue
P. O. Box 9127
Memphis, Tennessee

Re: Shirley Highway Site

Dear Mr. Wilson:

Messrs. Robert Weiss and Jacob Broidie came away from their meeting with you with the understanding that the Holiday Inns of America, Inc. would hold a franchise for us for the site at the corner of Shirley Highway and Glebe Road in Arlington, Virginia. The information which we have been able to obtain regarding the South Gate motel across the street is that their recent occupancy rate has been approximately 90% and that they anticipate an average occupancy rate of 70% for the year.

We have had preliminary plans and specifications prepared and will submit them for a loan commitment on Monday. As quickly as possible, which should be before July 1, we should be in a position to apply formally for the franchise.

Will you kindly confirm to us that you are holding the franchise for this site together with the area, except as to your company owned motel site, pending our formal application.

Very truly yours,

JULIAN SAVAGE AND COMPANY

/s/ Julian Savage

cc: Bernard Margolius
Robert Weiss

PLAINTIFFS' EXHIBIT 7 (Excerpt)

Draft

JOINT VENTURE AGREEMENT

THIS AGREEMENT made and entered into this 29th day of Oct. 1959, by and between EDWARD MARGOLIN, MARY DECKELBAUM, ARTHUR S. GOOZH, MONTE ROSENHEIM, ROBERT STOLAR, JOSEPH KIPNIS,

LOUIS E. LURIA, EDWIN A. COHEN, ~~TEMPORARY~~ OR

SCHROENBERG, LEO MILWIT, FRANK M. PERPER, ALAN SAHM, JULIAN SAVAGE, BERNARD MARGO-

LIUS, JACOB M. BROIDIE, ROBERT B. WEISS,

MORRIS D. STOLAR, and NORMAN FINKELSTEIN.

WITNESSETH:

PLAINTIFFS' EXHIBIT 8

Draft

JOINT VENTURE AGREEMENT

THIS AGREEMENT made and entered into this 29th day of Oct. 1959, by and between EDWARD MARGOLIN, MARY DECKELBAUM, ARTHUR S. GOOZH, MONTE ROSENHEIM, ROBERT STOLAR, JOSEPH KIPNIS, LOUIS:

E. LURIA, EDWIN A. COHEN, ~~TEMPORARY~~ OR SCHOEN-

BERG, LEO MILWIT, FRANK M. PERPER, ALAN SAHM, JULIAN SAVAGE, BERNARD MARGOLIUS, JACOB M. BROIDIE, ROBERT B. WEISS, MORRIS D. STOLAR and NORMAN FINKLESTEIN.

MARTIN GOLDBERG, STEVEN DITZ, FRANK M. PERPER, ALAN SAHM, JULIAN SAVAGE, BERNARD MARGOLIUS, JACOB M. BROIDIE, ROBERT B. WEISS, MORRIS D. STOLAR and NORMAN FINKLESTEIN.

WITNESSETH: *ALVIN FRIEDMAN, JACK KAPLAN, GERALD B. GREENWALD, — HIMMELBLATT*

WHEREAS, the parties hereto have purchased certain property located in Arlington, Virginia, said property being more particularly described in a deed dated the ___ day of ___, 1959, and duly recorded in the land records for Arlington County, Virginia, in Liber ___, Folio ___, and are erecting thereon certain buildings and improvements to be used and operated as a motel and restaurant, and

WHEREAS, said property has been taken in the names of Jacob M. Broidie and Robert B. Weiss, and ~~Frank M.~~ ^{HAROLD} Perper has obtained a franchise for said motel from the Holiday Inns of America, all on behalf of the parties hereto and

WHEREAS, the parties desire and intend, by this Agreement, to set forth in writing the terms and conditions of the joint venture entered into by them for the purpose of acquiring and owning said property and constructing the buildings and improvements, and the operation of the motel after its completion, and to set forth the interest of each of the parties in said venture and the distribution of the profits and the sharing of the losses which may be realized or suffered as a result of the venture,

NOW, THEREFORE, IT IS AGREED:

1. That the parties hereto are engaged in and shall continue to be engaged in a joint venture for the purpose of owning the property described in the deed dated the ___ day of ___, 1959, and duly recorded as above set forth, for the purpose of erecting or causing to be created buildings and improvements upon said property, and of furnishing the same, after completion, of operating said buildings and improvements as a Holiday Inn Motel, or under such other name as may from time to time be agreed upon, and this joint venture shall be, and it is hereby limited and restricted solely to the business purposes herein contained.

2. It is agreed that the deed to the property has been executed and recorded in the names of Jacob M. Broidie and Robert B. Weiss as joint tenants and in accordance with the understanding of the parties hereto the said Jacob M. Broidie and Robert B. Weiss hereby acknowledge that they hold said property, together with all buildings and improvements, furniture, furnishings and equipment, erected or to be erected or installed in or upon said property, for the benefit of all the parties to this agreement, to the same extent as the parties to this agreement, were the named owners of record, and the parties hereto own all the assets of the joint venture, including the land, buildings, improvements, furniture, fixtures, equipment, franchises, etc., as tenants in common in the respective amounts equal to their original capital, plus subsequent contributions to capital, less withdrawals and increased or decreased by the profits or losses credited or charged to their respective capital accounts in the ratio set forth in the following paragraph.

2. (a)	Edward Margolin	1/4	5%	G.B. 1/4	JB 1/4
	Mary Deckelbaum		5%	***	
	Arthur S. Goozh	2 1/2	5%	***	***
	Monte Rosenheim		5%		
	Robert Stolar		5%		
	Joseph Kipnis	2 1/2	5%	H.K. 2 1/2	
	Louis E. Luria	2 1/2	5%	FB 2 1/2	
	Edwin A. Cohen		5%		
	RUTH Tempchin or Schoenberg	1/4	5%	FP 1/4	
	Leo Milwit		5%		
	Harold Frank M. Perper		5%		
	Alan Sahm		5%		
	Julian Savage		5%		
	Bernard Margolius		10%	8 RHD	
	Jacob M. Broidie		5%		
	Robert B. Weiss		10%		
	Morris D. Stolar		5%		
	Norman Finkelstein		5%		
	MARTIN GOLDBERG		1-1/4%	SD 1/4	

3. It is understood and agreed that the capital of the joint venture shall be contributed as follows: Each of

the joint ventures, other than ~~Frank M.~~^{Harold} Perper, Alan Sahm, Julian Savage, Bernard Margolius,^{2nd} Jacob M. Broidie, Robert B. Weiss, Morris D. Stolar and Norman Finkelstein, shall contribute the sum of Twenty Thousand (\$20,000) Dollars for each 5% interest, or proportionately as his interest may bear to said 5% interest. In addition, the remaining venturers, viz. ~~Frank M.~~^{Harold} Perper, Alan Sahm, Julian Savage, Bernard Margolius,^{2nd} Jacob M. Broidie, Robert B. Weiss, Morris D. Stolar and Norman Finkelstein, shall contribute, if required, the sum not to exceed One Hundred Thousand (\$100,000) Dollars, proportionately, as his interest may bear to said One Hundred Thousand Dollars. It is further understood and agreed that any additional monies required to complete the buildings over and above Three Hundred Thousand (\$300,000) and trusts or mortgages, including the existing trust which shall become a second trust, and the permanent trust or mortgage and any additional trusts or mortgages placed against said property, shall be contributed as follows:

One-third of ~~such~~^{such} additional capital required shall be contributed by ~~Frank M.~~^{Harold} Perper, Alan Sahm, Julian Savage, Bernard Margolius,^{2nd} Jacob M. Broidie, Robert B. Weiss, Morris D. Stolar and Norman Finkelstein, proportionately, as his interest may bear to said amount, and two-thirds by Edward Margolin, Mary Deckelbaum, Arthur S. Goozh, Monte Rosenheim, Joseph Kipnis, Louis E. Luria, Edwin A. Cohen, Tempchin or Schoenberg,^{Harold} Leo^{2nd} Milwit, proportionately, as their interest may bear to such amount.

4. It is understood and agreed that the notes, totaling _____ and the trust on the property securing said notes and the subsequent permanent mortgage trust and note, executed by the said Jacob M. Broidie and Robert B. Weiss, constitutes an obligation of the joint venture. Said loan to be repaid out of the income and assets of the joint venture as the same shall become due and payable. Any losses sustained by reason of default or non-pay-

ment of said loan by any of the joint venturers in whose name the obligation was made, over and above the amount for which said named parties would be otherwise liable, shall be reimbursed by all the other joint venturers forthwith, it being understood that said mortgage obligation is a primary obligation of the joint venture to be paid for by all the venturers.

5. Each of the joint venturers shall have credited to his capital account the amount of capital contributed by him. All profits of the joint venture, if any, are to be divided between them in accordance with their interest, as set forth in paragraph 2(a) share and share alike, and all losses thereof of every kind shall be shared or borne by the joint venturers in the same proportion, unless changed by reason of the termination of the interest of any joint venturers as provided hereinafter in this agreement.

6. The joint venture shall continue until the purposes for which it has been created shall have been accomplished. The death or retirement of any joint venturer shall dissolve the joint venture as to the others except as hereinafter provided.

7. It is expressly understood and agreed by and between the joint venturers that all decisions affecting the ownership and management of the property of the joint venture shall be made by the affirmative vote of the majority in interest of the joint venture and all such decisions shall be binding upon all of the parties to this agreement. Full and accurate accounts of the transactions of the joint venture shall be kept in proper books, and each party shall cause to be entered in said books a full and accurate account of all of his transactions in behalf of the venture. The books of the joint venture shall be kept either at the place of business of the joint venture, or at the office of the Accountant auditing said books, and each party shall, at all reasonable times, have access to said books for inspection. At the end of

each year of the joint venture, the Accountant shall prepare a statement showing profits, assets and liabilities, and the gross and net income of the joint venture shall be ascertained and net profits and net losses shall be fixed and determined. The amount so fixed shall be divided proportionately by the parties hereto in proportion to their interest in the joint venture as hereinabove provided. The joint venture shall make monthly distributions to the joint venturers, if the cash position of the joint venture warrants a distribution.

8. A bank account or accounts shall be opened and maintained on behalf of the parties of this agreement and such account or accounts shall be owned by the parties to this agreement as tenants in common. The persons entitled to draw on said account or accounts shall be decided by the majority of the parties hereto.

9. No joint venturer shall, without the consent of the majority of the others, assign, mortgage or charge his share in the assets or profits of the business of the joint venture or any part of such share; draw, accept or endorse any bill of exchange, or promissory note, on account of the joint venture, or lend any of the monies of the joint venture to any person or persons. Each joint venturer shall forthwith pay all monies, checks and negotiable instruments received by him on account of the firm into the bank to the firm account; shall be just and faithful to the others, and at all times give to each other full information and truthful explanation of all matters relating to the affairs of the joint venture. No joint venturer shall, during the existence of the joint venture, use the trade or business of the firm for his private benefit or advantage, but shall at all times do his best by all lawful means, to the utmost of his skill and power, for the joint interest, profit, benefit, and advantages of the firm. Each joint venturer shall promptly pay and discharge his separate and private debts and obligations and indemnify the joint venture from and against all actions, proceedings, costs, claims and demands in respect thereof.

10. If any joint venturer shall take advantage of any bankruptcy or insolvency act, or if he shall be adjudicated a bankrupt, or if an insolvency petition shall be filed against him, and a final adjudication of insolvency entered thereon, or if any partner shall make an assignment for the benefit of his creditors, then within 60 days after any such adjudication or assignment, the other joint venturers shall have the absolute option and right to purchase such venturer's interest in the joint venture at a price equal to his capital account, increased by his share of undistributed profits, and reduced by his share of losses, to the extent not already reflected in his capital account, for the year in which the adjudication or assignment is made.

11. It is understood and agreed that in the event it shall be determined by the majority of the parties in interest hereto that additional capital shall be needed by reason of any operating loss or because of the motel being enlarged and additional rooms constructed, then additional capital required for said enlargement or expansion shall be contributed by the joint venturers as follows: ¹⁵ ~~Frank M.~~ Perper, Alan Sahm, Julian Savage, Bernard Margolius, ¹¹¹ Jacob M. Broidie, Robert B. Weiss, Morris D. Stolar and Norman Finkelstein shall contribute one-third of the additional capital required, proportionately to their interest, and Edward Margolin, Mary Deckelbaum, Arthur S. Goozh, Monte Rosenheim, Joseph Kipnis, Louis E. Luria, Edwin A. Cohen, Tempchin or Schoenberg, Leo Milwit, shall contribute two-thirds of the additional capital required, proportionately to their interest. In the event any party hereto shall fail when called upon to contribute his share of any such additional capital within a period of time set by the majority, but not less than fifteen (15) days, then the amount of capital to be contributed by said party may be contributed by the remaining venturers pro rata, or by so many of them as shall agree to do so, after 10 days notice in writing given to each. In that event, the interest in the

joint venture of the party failing to contribute shall be reduced in proportion to which the amount required to be contributed bears to the evaluation of said party's interest as herein fixed, and the interest of those parties contributing the required capital shall have their interest in the joint venture increased pro rata. Should none of the joint venturers agree to contribute the capital required of a defaulting venturer, at the end of the 10 day notice period above provided for, then, and in that event, the interest of such defaulting party shall terminate and the amount theretofore contributed by him to the capital of the joint venture, plus his share of any accumulated profits or minus his share of any accumulated losses not already paid or deducted, shall be returned to him in 3 equal annual installments, bearing interest at the rate of 6% on the unpaid balance, the first annual installment to be paid one year from date of termination. In such case, said party shall thereafter be no longer deemed to be a member of the joint venture and shall be entitled to no part or share of any profits thereof, the failure to contribute the required capital being deemed to be a sale to the remaining venturers of said joint venturer's interest.

PLAINTIFFS' EXHIBIT 9

Draft

JOINT VENTURE AGREEMENT

THIS AGREEMENT made and entered into this ____ day of ____, 1959, by and between EDWARD MARGOLIN, MARY DECKELBAUM, ARTHUR S. GOOZH, MONTE ROSENHEIM, ROBERT STOLAR, JOSEPH KIPNIS, LOUIS E. LURIA, EDWIN A. COHEN, TEMP-
~~ALEXANDER~~ ³
 CHIN ~~OR SCHOENBERG~~, LEO MILWIT, ^{4 7 11 6 4 0} FRANK M. PER-
 PER, ALAN SAHM, JULIAN SAVAGE, BERNARD MAR-

GOLIUS, JACOB M. BROIDIE, ROBERT B. WEISS,
MORRIS D. STOLAR, and NORMAN FINKELSTEIN.

WITNESSETH:

WHEREAS, the parties hereto have purchased certain property located in Arlington, Virginia, said property being more particularly described in a deed dated the ___ day of ___, 1959, and duly recorded in the land records for Arlington County, Virginia, in Liber Folio ___, and are erecting thereon certain buildings and improvements to be used and operated as a motel and restaurant, and

WHEREAS, said property has been taken in the names of Jacob M. Broidie and Robert B. Weiss, and ~~Frank M.~~ ^{HAROLD} Perper has obtained a franchise for said motel from the Holiday Inns of America, all on behalf of the parties hereto and

WHEREAS, the parties desire and intend, by this Agreement, to set forth in writing the terms and conditions of the joint venture entered into by them for the purpose of acquiring and owning said property and constructing the buildings and improvements, and the operation of the motel after its completion, and to set forth the interest of each of the parties in said venture and the distribution of the profits and the sharing of the losses which may be realized or suffered as a result of the venture,

NOW, THEREFORE, IT IS AGREED:

1. That the parties hereto are engaged in and shall continue to be engaged in a joint venture for the purpose of owning the property described in the deed dated the ___ day of ___, 1959, and duly recorded as above set forth, for the purpose of erecting or causing to be erected buildings and improvements upon said property, and of furnishing the same, after completion, of operating said buildings and improvements as a Holiday Inn Motel, or under such other name as may from time to time be

agreed upon, and this joint venture shall be, and it is hereby limited and restricted solely to the business purposes herein contained.

2. It is agreed that the deed to the property has been executed and recorded in the names of Jacob M. Broidie and Robert B. Weiss as joint tenants and in accordance with the understanding of the parties hereto the said Jacob M. Broidie and Robert B. Weiss hereby acknowledge that they hold said property, together with all buildings and improvements, furniture, furnishings and equipment, erected or to be erected or installed in or upon said property, for the benefit of all the parties to this agreement, to the same extent as the parties to this agreement, were the named owners of record, and the parties hereto own all the assets of the joint venture, including the land, buildings, improvements, furniture, fixtures, equipment, franchises, etc., as tenants in common in the respective amounts equal to their original capital, plus subsequent contributions to capital, less withdrawals and increased or decreased by the profits or losses credited or charged to their respective capital accounts in the ratio set forth in the following paragraph.

2. (a)	Edward Margolin	5%
	Mary Deckelbaum	5%
	Arthur S. Goozh	5%
	Monte Rosenheim	5%
	Robert Stolar	5%
	Joseph Kipnis	5%
	Louis E. Luria	5%
	Edwin A. Cohen	5%
	Tempchin or Schoenberg	5%
	Leo Milwit	5%
	Frank M. Perper	5%
	Alan Sahm	5%
	Julian Savage	5%
	Bernard Margolius	10%
	Jacob M. Broidie	5%
	Robert B. Weiss	10%
	Morris D. Stolar	5%
	Norman Finkelstein	5%

3. It is understood and agreed that the capital of the

joint venture shall be contributed as follows: Each of the joint venturers, other than Frank M. Perper, Alan Sahm, Julian Savage, Bernard Margolius, Jacob M. Broidie, Robert B. Weiss, Morris D. Stolar and Norman Finkelstein, shall contribute the sum of Twenty Thousand (\$20,000) Dollars for each 5% interest, or proportionately as his interest may bear to said 5% interest. In addition, the remaining venturers, viz, Frank M. Perper, Alan Sahm, Julian Savage, Bernard Margolius, Jacob M. Broidie, Robert B. Weiss, Morris D. Stolar and Norman Finkelstein, shall contribute, if required, the sum not to exceed One Hundred Thousand (\$100,000) Dollars, proportionately, as his interest may bear to said One Hundred Thousand Dollars. It is further understood and agreed that any additional monies required to complete the buildings over and above Three Hundred Thousand (\$300,000) and trusts or mortgages, including the existing trust which shall become a second trust, and the permanent trust or mortgage and any additional trusts or mortgages placed against said property, shall be contributed as follows: One-third of such additional capital required shall be contributed by Frank M. Perper, Alan Sahm, Julian Savage, Bernard Margolius, Jacob M. Broidie, Robert B. Weiss, Morris D. Stolar and Norman Finkelstein, proportionately, as his interest may bear to said amount, and two-thirds by Edward Margolin, Mary Deckelbaum, Arthur S. Goozh, Monte Rosenheim, Joseph Kipnis, Louis E. Luria, Edwin A. Cohen, Tempchin or Schoenberg, Leo Milwit, proportionately, as their interest may bear to such amount.

4. It is understood and agreed that the notes, totaling

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and the trust on the property securing said notes, and the subsequent permanent mortgage trust and note, executed by the said Jacob M. Broidie and Robert B. Weiss, constitutes an obligation of the joint venture. Said loan to be repaid out of the income and assets of the joint venture as the same shall become due and payable. Any losses sustained by reason of default or non-payment of

said loan by any of the joint venturers in whose name the obligation was made, over and above the amount for which said named parties would be otherwise liable, shall be reimbursed by all the other joint venturers forthwith, it being understood that said mortgage obligation is a primary obligation of the joint venture to be paid for by all the venturers.

5. Each of the joint venturers shall have credited to his capital account the amount of capital contributed by him. All profits of the joint venture, if any, are to be divided between them in accordance with their interest, as set forth in paragraph 2(a) share and share alike, and all losses thereof of every kind shall be shared or borne by the joint venturers in the same proportion, unless change by reason of the termination of the interest of any joint venturers as provided hereinafter in this agreement.

6. The joint venture shall continue until the purposes for which it has been created shall have been accomplished. The death or retirement of any joint venturer shall dissolve the joint venture as to the others except as hereinafter provided.

7. It is expressly understood and agreed by and between the joint venturers that all decisions affecting the ownership and management of the property of the joint venture shall be made by the affirmative vote of the majority in interest of the joint venture and all such decisions shall be binding upon all of the parties to this agreement. Full and accurate accounts of the transactions of the joint venture shall be kept in proper books, and each party shall cause to be entered in said books a full and accurate account of all of his transactions in behalf of the venture. The books of the joint venture shall be kept either at the place of business of the joint venture, or at the office of the Accountant auditing said books, and each party shall, at all reasonable times, have access to said books for inspection. At the end of each year of the joint venture, the Accountant shall pre-

pare a statement showing profits, assets and liabilities, and the gross and net income of the joint venture shall be ascertained and net profits and net losses shall be fixed and determined. The amount so fixed shall be divided proportionately by the parties hereto in proportion to their interest in the joint venture as hereinabove provided. The joint venture shall make monthly distributions to the joint venturers, if the cash position of the joint venture warrants a distribution.

8. A bank account or accounts shall be opened and maintained on behalf of the parties of this agreement and such account or accounts shall be owned by the parties to this agreement as tenants in common. The persons entitled to draw on said account or accounts shall be decided by the majority of the parties hereto.

9. No joint venturer shall, without the consent of the majority of the others, assign, mortgage or charge his share in the assets or profits of the business of the joint venture or any part of such share; draw, accept or endorse any bill of exchange, or promissory note, on account of the joint venture; or lend any of the monies of the joint venture to any person or persons. Each joint venturer shall forthwith pay all monies, checks and negotiable instruments received by him on account of the firm into the bank to the firm account; shall be just and faithful to the others, and at all times give to each other full information and truthful explanation of all matters relating to the affairs of the joint venture. No joint venturer shall, during the existence of the joint venture, use the trade or business of the firm for his private benefit or advantage, but shall at all times do his best by all lawful means, to the utmost of his skill and power, for the joint interest, profit, benefit, and advantages of the firm. Each joint venturer shall promptly pay and discharge his separate and private debts and obligations and indemnify the joint venture from and against all actions, proceedings, costs, claims and demands in respect thereof.

10. If any joint venturer shall take advantage of any bankruptcy or insolvency act, or if he shall be adjudicated a bankrupt, or if an insolvency petition shall be filed against him, and a final adjudication of insolvency entered thereon, or if any partner shall make an assignment for the benefit of his creditors, then within 60 days after any such adjudication or assignment, the other joint venturers shall have the absolute option and right to purchase such venturer's interest in the joint venture at a price equal to his capital account, increased by his share of undistributed profits, and reduced by his share of losses, to the extent not already reflected in his capital account, for the year in which the adjudication or assignment is made.

11. It is understood and agreed that in the event it shall be determined by the majority of the parties in interest hereto that additional capital shall be needed by reason of any operating loss or because of the motel being enlarged and additional rooms constructed, ^{therein} and additional capital required for said enlargement or expansion shall be contributed by the joint venturers as follows: Frank M. Perper, Alan Sahm, Julian Savage, Bernard Margolius, Jacob M. Broidie, Robert B. Weiss, Morris D. Stolar and Norman Finkelstein shall contribute one-third of the additional capital required, proportionately to their interest, and Edward Margolin, Mary Deckelbaum, Arthur S. Goozh, Monte Rosenheim, Joseph Kipnis, Louis E. Luria, Edwin A. Cohen, Tempchin or Schoenberg, Leo Milwit, shall contribute two-thirds of the additional capital required, proportionately to their interest. In the event any party hereto shall fail when called upon to contribute his share of any such additional capital within a period of time set by the majority, but not less than fifteen (15) days, then the amount of capital to be contributed by said party may be contributed by the remaining venturers pro rata, or by so many of them as shall agree to do so, after 10 days notice in writing given to each. In that event, the interest in the

joint venture of the party failing to contribute shall be reduced in proportion to which the amount required to be contributed bears to the evaluation of said party's interest as herein fixed, and the interest of those parties contributing the required capital shall have their interest in the joint venture increased pro rata. Should none of the joint venturers agree to contribute the capital required of a defaulting venturer, at the end of the 10 day notice period above provided for, then, and in that event, the interest of such defaulting party shall terminate and the amount theretofore contributed by him to the capital of the joint venture, plus his share of any accumulated profits or minus his share of any accumulated losses not already paid or deducted, shall be returned to him in 3 equal annual installments, bearing interest at the rate of 6% on the unpaid balance, the first annual installment to be paid one year from date of termination. In such case, said party shall thereafter be no longer deemed to be a member of the joint venture and shall be entitled to no part or share of any profits thereof, the failure to contribute the required capital being deemed to be a sale to the remaining venturers of said joint venturer's interest.

12. It is further agreed by the parties hereto that in the event any of the parties shall die prior to the consummation of the objects of the joint venture, the joint venture shall terminate and the surviving parties agree that the heirs or legatees of the deceased party may hold the latter's interest in the same manner and under the same terms and conditions as if said party were living, in a new venture to be formed, but in the event said heirs or legatees shall sell the same, their interest shall be sold upon the same terms as provided in the case of a sale during the lifetime of any party as hereinafter set forth, plus the deceased venturer's share of accumulated profits or less his share of accumulated losses not previously paid or deducted, said profits or losses to be determined as of the last day of the month in which the joint venturer dies. In the event no election is made by

the administrator, executor, heirs or legatees of the deceased joint venturer within 30 days after the death of the said joint venturer, then it will be presumed that said heirs or legatees do not desire to form a new joint venture.

13. In the event any party desires to dispose of, transfer or sell his interest in the joint venture, he shall first give notice of such intention by registered mail, return receipt requested, addressed to the other joint venturers, which notice shall be considered an offer to sell the said interest, and the other joint venturers shall thereupon have the option and right to purchase the same pro rata within thirty (30) days after receipt of said notice upon the following terms: The price shall be computed in the following manner: The majority in interest of the joint venturers on June 1, 1960, or as soon thereafter as possible, shall establish a price to be paid for a 1% interest in the venture, and said price shall be used to compute the price to be paid the retiring joint venturer for the interest which he may have in said venture, in addition to the amount of capital contributed by said venturer. In the event any joint venturer desires to retire prior to the fixing of the evaluation on June 1, 1960, the price to be paid shall be the amount of capital contributed by him. On June 1, or as soon thereafter as possible, every year thereafter, the parties, by majority vote, shall reconsider and re-evaluate the price. Evaluation as herein provided shall be reduced to writing signed by a majority of the joint venturers and a copy delivered to each of the joint venturers. In the absence of a re-evaluation at any period as herein provided the prior evaluation shall be deemed to be continued in effect. Should any additional building or buildings be constructed during any two year period, the evaluation as herein computed shall be thereupon made, signed by a majority of the parties. Said evaluation shall be made within 30 days after completion of the new building or buildings and shall remain in effect until a re-evaluation made every year

thereafter and each successive year following. The price as thus computed shall be paid 50% in cash within sixty (60) days following receipt of the written notice to sell. The balance shall be represented by a promissory note of the joint venture bearing interest at the rate of 6% per annum and payable in five (5) annual installments. In the event the joint venture shall not exercise the right to purchase the interest of a retiring joint venturer, in accordance with the terms of this paragraph, then such joint venturer's interest may be purchased so many of the joint venturers desiring to do so, pro rata under the same terms and conditions as herein provided, except that the promissory note shall be signed only by such joint venturers purchasing the same. Said purchase shall be made within forty-five (45) days after the receipt of the original notice of the offer to sell. In the event the joint venture or any of the joint venturers shall not exercise the right to purchase the interest of a retiring joint venturer, in accordance with the terms of this paragraph, then the assets of the joint venture shall be sold and disposed of at the earliest possible time and at the highest price obtainable, and the joint venture shall be terminated, dissolved and liquidated.

14. In the event the majority in interest of the joint venturers shall decide to lease said motel, and as a result of said lease there is obtained a security deposit, said funds shall be distributed to the joint venturers in accordance with their percentage of interest as set forth in paragraph 2.(a) hereof.

15. This agreement may be modified or changed at any time by agreement in writing between the parties.

16. In the event that the majority of the parties hereto shall so desire, Jacob M. Broidie and Robert B. Weiss, shall assign and transfer the property by deed, duly executed and acknowledged, to such person or persons as shall be designated by the affirmative vote of the major-

ity of the parties hereto, subject to any mortgage outstanding or any leasehold on the restaurant or any other part of the building or buildings which may have been executed on behalf of the joint venture, and provided that no action shall be taken by any parties to this agreement to diminish the interest of any other party to this agreement, except as specifically provided in hereinabove.

17. It is understood and agreed that none of the joint venturers shall be paid any salary or receive any compensation, except for expenses, unless agreed to by the majority of the parties hereto.

18. This agreement represents the entire understanding between the parties hereto and shall be binding upon the parties hereto, their heirs, executors, administrators and assigns.

IN WITNESS WHEREOF, the parties have signed and sealed these presents on the date first above written.

Memorandum from the desk of ---

FRANK M. PERPER
Mediterranean Apartments, Apt. #301
9101 E. Bay Harbor Drive
Miami Beach 54, Florida

PLAINTIFFS' EXHIBIT 11

TO- Jerry

Dear Jerry

We decided to sell Holiday Inn
on the Shirley H. Washington H.C.
This is a "steal". Jerry let me say on 1st
deal, I have only 10% but I have 1st
right to sell this. He is a hotel
106 units with an out standing, Rest
Bldg will be a 2 story & Basement

393

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from the original bound volume

Banquet Room, Rest, Gift Shop & large
Lobby. He is where the (Steel Commission)
It will stand in, 950,000 we want \$1,500,000.
You have 6 years to pay the ground off
I think it is around \$580,000.
This hotel is about 3 minutes to the
Blair of Tunnel, to the hotel.
I will say it will cost over \$1,000 a
month & Rest has a \$1,000 month gas.
But should do at least a \$20,000 a
year rent, the same operator as Richmond
Winston, Winchester & district very good.
Now we have a \$500,000 first mortgage.

the other has plans for another 54 units
after 6 months we are to show-
Prod. a statement & we expect to
get another \$252,000 mortgage if
we add the 54 units which I know
you can use right now. I am not
interested in a lease back as I have
only a 10% interest & I am not going
to spend my time for that. I usually
have around 25 to 35%.
Jerry they are up to the first floor
so let me know immediately on 16's
- I am

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PLAINTIFFS' EXHIBIT 14

AGREEMENT

THIS AGREEMENT, entered into this 1st day of June, 1960 by and between Jacob M. Broidie, Ralph H. Deckelbaum, Norman Finkelstein, Bernard Margolius, Julian Savage, Morris Stolar, Alan Sahm, Harold Perper and Robert B. Weiss, parties of the first part, and Frank Perper and Henriette Perper, parties of the second part,

WITNESSETH:

WHEREAS, the parties of the first part are part of a joint venture known as the Holiday Inn of Arlington, and are desirous of borrowing monies from time to time to invest in said joint venture; and

WHEREAS, the parties of the first part are desirous of setting forth their per cent of primary obligation with respect to any such monies borrowed, and

WHEREAS, the parties of the second part have agreed to pledge their credit on behalf of the parties of the first part.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, it is mutually agreed as follows:

1. In consideration of the sum of Ten (\$10.00) Dollars, and other valid consideration paid by the parties of the first part to the parties of the second part, the parties of the second part hereby agree to execute together with the parties of the first part, a guaranty agreement and/or notes for the following loans made by the parties of the first part:

- a. From Security Bank in the sum of \$50,000.00;
- b. From The National Bank of Washington a sum not
\$21,500.00
to exceed ~~\$20,000.00~~, the proceeds of said loans
to be used in the joint venture.

c. From Broward National Bank, Fort Lauderdale, Florida, \$30,000.

2. The parties, of the first part agree that they shall be primarily responsible for the payment of the aforesaid obligations in the following percentages:

Jacob Broidie	10%
Ralph H. Deckelbaum	4%
Norman Finkelstein	14%
Bernard Margolius	16%
Harold Perper	10%
Alan Sahm	10%
Julian Savage	10%
Morris Stolar	5%
Robert B. Weiss	21%

The parties of the second part agree that they shall be primarily responsible for the percentages held by Alan Sahm and Harold Perper.

3. The parties of the first part agree that any monies which each of them may be entitled to receive from their respective interest in the Holiday Inn of Arlington joint venture may be applied toward the payment of the aforesaid obligations in accordance with the ratios set forth in Paragraph 2.

4. The parties of the first part and the parties of the second part hereby designate Jacob Broidie and Robert B. Weiss and Julian Savage as their agents for the execution of the aforesaid notes and hereby authorize them to sign on behalf of the undersigned, the aforesaid notes and any renewal or extension of the same or any part thereof.

5. Each of the parties hereto hereby designates and appoints Bernard Margolius of 1000 Vermont Avenue, N.W., Washington, D.C., as their agent and Attorney in fact, upon whom process in the District of Columbia may be issued by anyone or more of the parties hereto against the other party or parties hereto. The appointment of this agent is for the sole purpose of the service of proc-

ess of an action between the parties hereto arising out of this agreement, and the appointment of this agent is irrevocable unless agreed to by all of the parties hereto.

6. In the event of a default, in the payment of any of the aforesaid obligations by any one or more of the parties hereto, it is agreed that said defaulting parties obligation shall be borne by the remaining party or parties in accordance with the ratio set forth in Paragraph 2 above.

7. This agreement shall be binding upon the heirs, executors, administrators, and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day above first written.

/s/ Jacob M. Broidie	/s/ Morris Stolar
/s/ Ralph H. Deckelbaum	/s/ Alan Sahm
/s/ Norman Finkelstein	/s/ Harold Perper
/s/ Bernard Margolius	/s/ Robert B. Weiss
/s/ Julian Savage	/s/ Frank Perper
	/s/ Henriette Perper

PLAINTIFFS' EXHIBIT 15

HOLIDAY INNS OF AMERICA, INC.
Memphis, Tenn.

March 9, 1961

Mr. Robert B. Weiss
c/o Robert B. Weiss & Co.
1415 K Street, N. W.
Suite 302
Washington 5, D. C.

Dear Mr. Weiss:

It certainly was a pleasure talking with you last Tuesday morning in regard to your project near the Holland Tunnel and also your property in downtown Washington.

As I mentioned to you over the phone, we are committed for the Washington area, however, we would like to review your property. If we are in a position to work something out, we will notify you to that effect.

In the meantime, if we can answer any questions that you might have concerning our franchise program, please feel free to contact us.

Sincerely yours,

HOLIDAY INNS OF AMERICA, INC.

/s/ Jeff Mann
Assistant Vice President
Franchise Sales Department

PLAINTIFFS' EXHIBIT 16

HOLIDAY INNS OF AMERICA, INC.
Memphis, Tenn.

August 17, 1961

Mr. Norman Finkelstein
1415 K Street, N. W.
Washington, D. C.

Dear Mr. Finkelstein:

This letter is to confirm our conversation here in the Memphis Office today, August 17, 1961.

We have returned to you, your check for \$10,000.00 along with your financial statements and your feasibility report for your planned motor hotel, adjacent to the Baltimore Parkway outside of Washington, D. C.

As we discussed, we do have an understanding with Mr. Frank Perper as to the development of future Holiday Inns in Washington, D.C. On the basis of this commitment, we are returning your application.

Sincerely yours,

HOLIDAY INNS OF AMERICA, INC.

/s/ Jeff Mann,
Assistant Vice President
Franchise Sales Department

JM:nb

PLAINTIFFS' EXHIBIT 18

ARENT, FOX, KINTNER, PLOTKIN & KAHN
1000 Federal Bar Building
Washington 6, D. C.

October 3, 1962

Whitestone Motor Inn, Inc.
c/o Holiday Inn
Shirley Highway and Glebe Road
Arlington, Virginia

Attention: Norman Shapiro

Gentlemen:

We represent Mr. Frank M. Perper, the managing venturer of Shirley Glebe Motel Joint Venture, which owns the Holiday Inn Motel (and related personal property) at Shirley Highway and Glebe Road in Arlington, Virginia and leases the same to you as lessee.

Mr. Perper has informed us that part of the personal property owned by Shirley Glebe Motel Joint Venture and leased by it to you consisted of all of the linens on the motel premises. It has been brought to his attention that approximately 18 months ago you, although you were lessee and not owner of such linens, sold them to Fairfax Linen Company for a price of \$8,700.

In view of the fact that the linens sold were the property of Shirley Glebe Motel Joint Venture, the purchase price of course belongs to the Joint Venture and must be considered as being held by you as a constructive trustee for the benefit of the Joint Venture.

Mr. Perper has therefore asked us to make demand on you for payment, within seven days, of the \$8,700 owed by you to Shirley Glebe Motel Joint Venture in respect of your aforesaid sale of the linens. He has also indicated that, unless such payment is thus received, the

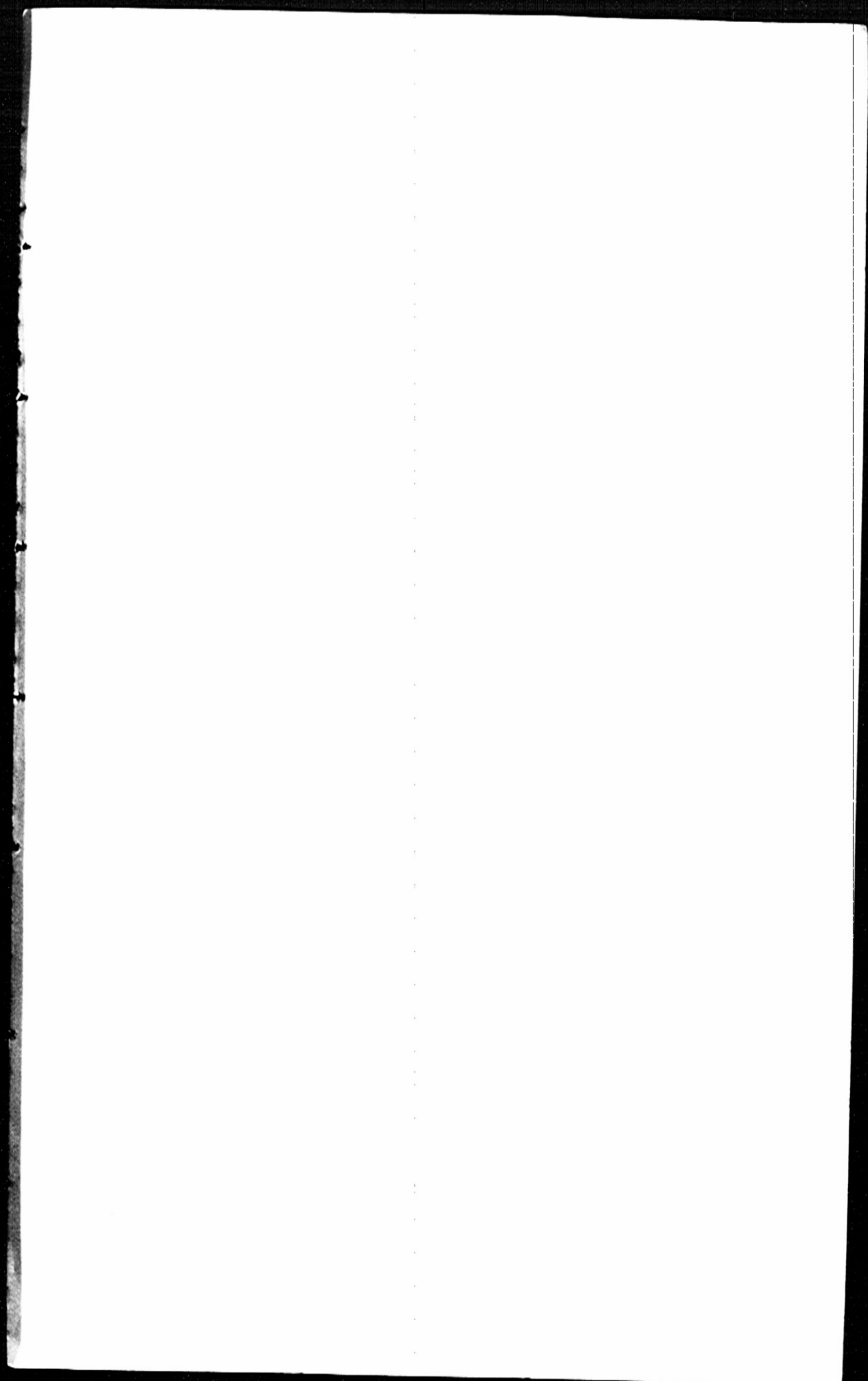
Joint Venture will be forced to bring suit to enforce its rights to the \$8,700.

Thank you very much for your cooperation.

Very truly yours,

/s/ David M. Osnos

cc: Joseph F. Haas
Frank M. Perper



30

W. J. ... (3440 ...)
Robert

Holiday Inns

OF AMERICA, INC.

3736 LAMAR AVE.
POST OFFICE BOX 7127
MEMPHIS 18, TENNESSEE

FILED

MAR 25 1966

ROBERT M. STEARNS, Clerk

PERSONAL INFORMATION

Franchise Territory Requested

*CLARE ROAD & SHIRLEY HWY. (NACRES),
WASHINGTON, D.C.*

If Corporation ☐ or Partnership ☒ The Name

SAME AS WINCHESTER, VA.

Principal's Name

HAROLD PERPER

Business Address

City

State

Phone

Home Address

City

State

Phone

Name of Bank

Bank Address

Type of Account: Savings ☐ Checking ☐

Marital Status

No. of children

Any Hotel or Motel experience?

Give three (3) Bank and/or business references:

Name

Address

Name

Address

Name

Address

Give three (3) personal references:

Name

Address

Name

Address

Name

Address

To what civic and service clubs do you belong and title, if any:

Club

Title

Club

Title

Club

Title

The statements contained in this application are warranted to be full, true and complete and nothing has been suppressed affecting my credit or moral stability. No statements or information furnished to any officer, agent or representative of HOLIDAY INNS OF AMERICA, INC. shall be notice, unless the same is contained herein.

PLAINTIFFS' EXHIBIT 20

This application must be accompanied by the individual's detailed financial statement and must be forwarded to the Executive Offices of HOLIDAY INNS OF AMERICA, INC., Memphis, Tennessee, as soon as possible.

Applicant's Signature _____

Witness _____

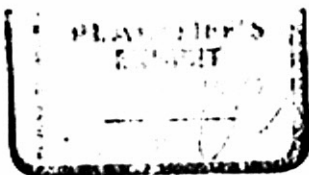
Dated this _____

Day of _____

Received By _____

Please attach a map of the proposed territory on the following sheet.

① FLANNIC PERPER
ADDRESSES



Wais 3440-07
Part

Ch. 121
for 14,000.00
+ deposit

Frank Perper - 9101 East Bay
Idaho Drive

Holiday Inns OF AMERICA, INC.
Apt. 301

3736 LAMAR AVE.
POST OFFICE BOX 7127
MEMPHIS 18, TENNESSEE

FILED
MAR 25 1966

ROBERT M. STEARNS, Clerk

PERSONAL INFORMATION

Franchise Territory Requested Glebe Rd. & Shirley Hwy. (2 Acres), Washington, D. C.

If Corporation ☐ or Partnership ☒ The Name _____

Principal's Name Harold Perper

Business Address Daniel Rice & Co., 71 S. Harding Road

City Miami State Florida Phone UN 5-3630

Home Address 1955 Normany Drive

City Miami Beach State Florida Phone _____

Name of Bank Union Trust Co., Washington, D. C.

Bank Address _____

Type of Account: Savings ☒ Checking ☒

Marital Status _____ No. of children 2

Any Hotel or Motel experience? _____

Give three (3) Bank and/or business references:

Name Lou Paladini Address Ex Vice-Pres. Broward Nat. Bank, St. Aug.

Name _____ Address _____

Name Warren Forster Address Chairman of Board Union Trust Co., Washington, D. C.

Give three (3) personal references:

Name _____ Address _____

Name _____ Address _____

Name _____ Address _____

To what civic and service clubs do you belong and title, if any:

Club _____ Title _____

Club _____ Title _____

Club _____ Title _____

The statements contained in this application are warranted to be full, true and complete and nothing has been suppressed affecting my credit or moral stability. No statements or information furnished to any officer, agent or representative of HOLIDAY INNS OF AMERICA, INC. shall be notice, unless the same is contained herein.

PLAINTIFFS' EXHIBIT 21

This application must be accompanied by the individual's detailed financial statement and must be forwarded to the Executive Offices of HOLIDAY INNS OF AMERICA, INC., Memphis, Tennessee, as soon as possible.

Applicant's Signature

Francis J. Duper

Witness

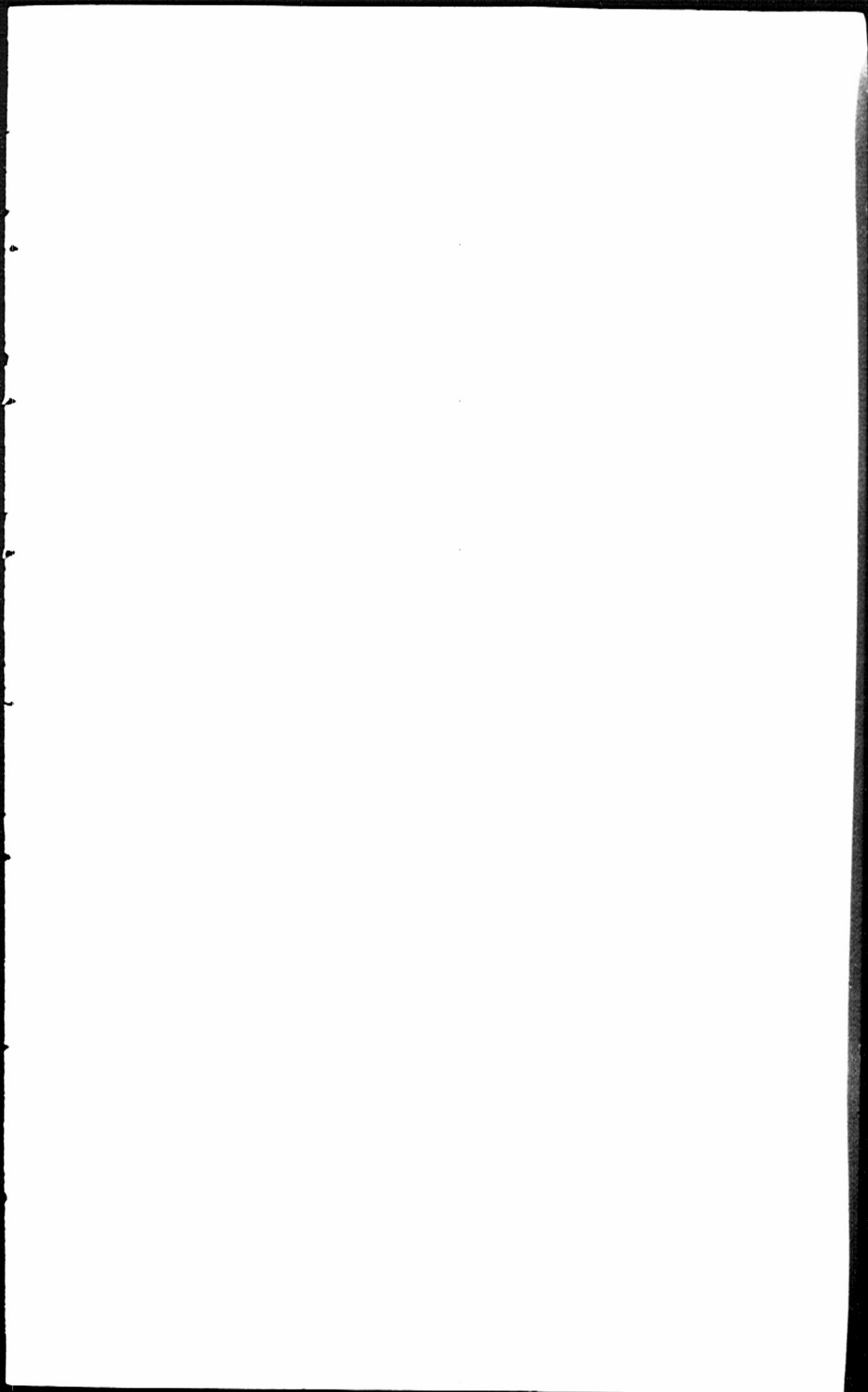
Dated this 13th.

Day of June

19 59

Received By

Please attach a map of the proposed territory on the following sheet.



NOW IN OUR FORTY-THIRD YEAR
MOTEL MANAGEMENT CORPORATION OF AMERICA
815-821 15TH STREET, NORTHWEST
WASHINGTON 5, D. C.

REPUBLIC 7-6244
AFFILIATE, REX MOTEL CONSTRUCTION CORPORATION

FRANK M. PERPER
PRESIDENT

PLAINTIFFS' EXHIBIT 22

FILED

MAR 25 1963

ROBERT M. STEARNS, Clerk

Dear Bernie

This is the ~~the~~ deal:

I want to take deposit now, get the
summer months in, make settlement
on the #1 as of Oct 1st. \$1,200,000
\$350,000 cash or \$320,000 (commission)
40 units at \$1100 a unit (net)

407

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Deposit \$50,000. Settlement 1 year later.

I have everybody's Consent.

I got a letter back from Kemmer's that
✓ a franchise will not be given to Kirsch
until Jack Sadd gets back from abroad.
I expect to see Jack in Paris.

408

P.S.

In the mean time I
stop the deal in Calif. Va.

Jack

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from the original bound volume

PLAINTIFFS' EXHIBIT 23

ARENT, FOX, KINTNER, PLOTKIN & KAHN
Washington, D. C.

October 3, 1962

Whitestone Motor Inn, Inc.
c/o Holiday Inn
Shirley Highway and Glebe Road
Arlington, Virginia

Attention: Norman Shapiro

Gentlemen:

We represent Mr. Frank M. Perper, the managing venturer of Shirley Glebe Motel Joint Venture, which owns the Holiday Inn Motel (and related personal property) at Shirley Highway and Glebe Road in Arlington, Virginia and leases the same to you as lessee.

Mr. Perper has informed us that part of the personal property owned by Shirley Glebe Motel Joint Venture and leased by it to you consisted of all of the linens on the motel premises. It has been brought to his attention that approximately 18 months ago you, although you were lessee and not owner of such linens, sold them to Fairfax Linen Company for a price of \$8,700.

In view of the fact that the linens sold were the property of Shirley Glebe Motel Joint Venture, the purchase price of course belongs to the Joint Venture and must be considered as being held by you as constructive trustee for the benefit of the Joint Venture.

Mr. Perper has therefore asked us to make demand on you for payment, within seven days, of the \$8,700 owed by you to Shirley Glebe Motel Joint Venture in respect of your aforesaid sale of the linens. He has also indicated that, unless such payment is thus received, the Joint Ven-

ture will be forced to bring suit to enforce its rights to the \$8,700.

Thank you very much for your cooperation.

Very truly yours,

/s/ David M. Osnos

cc: Joseph F. Haas
Frank M. Perper

PLAINTIFFS' EXHIBIT 26



(p's 2b)

Holiday Inn

OF RICHMOND

 PHONE ELgin 8-3296 • TELETYPE RH-560
 5221 BROOK ROAD • ROUTE NO. 1 NORTH OF RICHMOND • RICHMOND, VIRGINIA

FILED

MAR 25 1953

ROBERT M. STEARNS, Clerk

Dear Jack

will you kindly add
 to the Holiday Inn Franchise
 (Shirley Hy Arlington Va) the
 names of Harold E Perper &
 Edward Cohen,

Franklin Paper.

5-B

PLAINTIFFS' EXHIBIT 27

October 31, 1960

Mr. Frank Perper
c/o Julian Savage
815 15th Street, N.W.
Washington, D.C.

Dear Frank:

This letter is for the purpose of advising you that we are preparing a new License Agreement for the Holiday Inn at Glebe Road and Shirley Highway as per your instructions. The new License will be in the name of Frank Perper, Harold Perper and Edwin Cohen.

Will you please return the original License immediately so that we can prepare the new License Agreement and forward to you for signatures. It will be necessary for the two other people to sign this License Agreement with you also.

Sincerely yours,

HOLIDAY INNS OF AMERICA, INC.

Jack Ladd, Vice President
Franchise Sales Department

cc: Mr. Charles Collins
Mr. Edwin Cohen

PLAINTIFFS' EXHIBIT 29

HOLIDAY INNS OF AMERICA, INC.
 Memphis 18, Tenn.

September 30, 1958

Mr. Bernard Margolius
 Suite 309 Wire Building
 1000 Vermont Avenue, N. W.
 Washington 5, D. C.

Dear Mr. Margolius:

Mr. Wilson has referred your letter of September 19, 1958 to me.

Before making any reference to your principal request concerning the names in which the License Agreements should be issued, I want to correct one statement which I consider to be in error as mentioned in your letter of September 19. When you made reference to Durham, N.C. and Charleston, West Virginia, you stated that Frank Perper had advised you that these two locations have been set aside for him. This is absolutely incorrect. Holiday Inns of America, Inc. never sets aside, holds or promises to reserve any locations for anyone. Until an application is approved for a territory there are no reserved areas held for anyone.

You will probably recall from reading our License Agreement that it is personal and not transferable. There is certainly no objection on the part of our company to having the names of your small group as owners of the Franchise. However, that will depend specifically upon the size of your group of investors. You will understand why we must know specifically who is interested in the operation if their name is to appear as an owner and they must understand that there is no right of assignment or transfer in the event of sale, death or otherwise. I am sure you can realize that if we have the License Agreement read "Frank M. Perper and Associates" that our company would have no way of knowing

the owners, and it is possible that many people could claim an interest in the ownership.

Please have Mr. Perper write us a separate letter for the License Agreement of each location concerned and request that the License Agreement which is now in his name be reissued in the names of the various persons he wants listed as owners. This gives us something specific and eliminates the possibility of any future dispute.

Sincerely,

HOLIDAY INNS OF AMERICA, INC.

/s/ Charles M. Collins
Vice President and
General Counsel

cc: Mr. Frank M. Perper

PLAINTIFFS' EXHIBIT 30

We the undersigned, partners in the Holiday Inn of Richmond #1, do hereby authorize Earl M. Foreman, Esquire to represent the partnership in connection with the sale of the motel property owned by the partnership.

10%	/s/ Ruth Schoenberg
5%	/s/ Mary Tempchin
	/s/ Alex Tempchin
15%	/s/ Harold E. Perper
5%	/s/ John Ross
10%	/s/ Sophia Goodman
5%	/s/ Henriette Perper
2-1/2%	/s/ Helen Melburn for 15 Inc.

PLAINTIFFS' EXHIBIT 31

EARL M. FOREMAN
Connecticut Avenue at L Street
Washington 6, D. C.

January 4, 1962

Bernard Margolius, Esquire
1000 Vermont Avenue, N.W.
Washington 5, D. C.

Dear Bernie:

As you know, at the last meeting of the Joint Venturers in the Holiday Inn of Richmond No. 1, Frank M. Perper was authorized to determine, by a vote of the Joint Venturers, whether you or I or the two of us jointly would perform the necessary legal work in connection with the sale of such Joint Venturers' motel property.

I recently received a document from Mr. Perper, a photostatic copy of which is attached hereto. I believe the same is self-explanatory and based upon the authorization recited in said document, I am proceeding to undertake to represent the Joint Venture in regard to the sale of its motel property.

If you have any questions concerning this matter, please do not hesitate to call me.

Sincerely,

Earl M. Foreman

cc: Ralph Deckelbaum, Esq.
Mr. Frank M. Perper
Mr. Julian Savage

DEFENDANTS' EXHIBIT 1

[Filed Mar, 28, 1966]

HOLIDAY INNS OF AMERICA, INC.
3736 Lamar Avenue
Memphis 18, Tenn.

June 23, 1959

Mr. Julian Savage
Julian Savage and Company
815 - 15th Street, N.W.
Washington 5, D. C.

Dear Mr. Savage:

In reply to your letter of June 6th, I am sure that by this time you have received a copy of the telegram I sent to Frank Perper, c/o Bernard Margolis.

I would appreciate your bringing me up to date as to what has transpired since.

Yours very truly,

/s/ Kemmons Wilson

DEFENDANTS' EXHIBIT 3

[Filed Mar. 25, 1966]

WESTERN UNION TELEGRAM

159 June 14 PM 2 09

Frank Perper

Care Bernie Margolis Wire Bldg Wash DC

Upon receipt application and check franchise for specified Washington location will be granted.

Holiday Inns of America Inc. Kemmons Wilson.

[Defendants' Exhibits 39 and 40 identical to
Plaintiffs' Exhibits 20 and 21, respectively,
appearing herein at JA pp. 403 and 405]

DEFENDANTS' EXHIBIT 41

[Filed Mar. 28, 1966]

July 14, 1959

Mr. Frank Perper
9101 East Bay Harbor Drive
Apartment 301
Miami Beach, Florida

Re: WASHINGTON, D. C., WINCHESTER, VIRGINIA

Dear Mr. Perper:

We are happy to advise you that at a meeting of the Executive Committee of Holiday Inns of America, Inc. held this date, your applications for two Licenses were approved in accordance with the following conditions:

WASHINGTON, D. C.

Your application for a location in Washington, D.C. was approved subject to the standard provisions and requirements of our License Agreement with the understanding that your license is for a specific location containing approximately two acres located at the intersection of Glebe Road and Shirley Highway near Washington, D.C. This License is for one Holiday Inn to be built on that specific site.

WINCHESTER, VIRGINIA

Your application for Winchester, Virginia was approved with the understanding that your Licensed Territory shall be the present city limits of the City of Winchester, Virginia. You are also reminded that additional fees become due and payable at any time you

may desire to erect other Holiday Inns within the Licensed Territory.

Both License Agreements will be prepared by the Legal Department and forwarded to you for execution within the very near future.

Very truly yours,
HOLIDAY INNS OF AMERICA, INC.

Jack Ladd, Vice President
Franchise Sales Department

DEFENDANTS' EXHIBIT 42

Sept. 21, 1959

Mr. Frank Perper
5319 Nebraska Avenue, N.W.
Washington, D. C.

Re: Proposed Holiday Inn, Arlington, Va.

Dear Mr. Perper:

We are in receipt of two sets of preliminary plans from your Architect, Kastner & Associates, as of September 14th, 1959 for your proposed Holiday Inn to be located at Arlington, Va.

We have examined this preliminary set of plan sheets and request that you proceed with final drawings for our approval. We insist that the plot plan show locations of the highways with the entrance approaches from same to the Motel. Also we note that the commercial building is located some distance from and not connected by covered canopies to the rental unit buildings; this type of construction we have found in the past to be undesirable. Also we question the desirability of the location of the swimming pool so far from the rental units — the pool

being installed for the primary use and convenience of the tenants of the motel.

We are enclosing herewith for you and also for your Architect, Mr. Kastner, our Requirements and/or Check List for a Holiday Inn. We believe that with the use of this list your Architects will be able to provide us with plans that we may approve and return for construction.

May we call to your attention that we are not approving this set of preliminary plans. Also that we are to receive and approve three (3) sets of plans and specifications including all mechanical plans and swimming pool prior to construction being started on this project.

Your cooperation in supplying us with the necessary plans for approval will be greatly appreciated by us and will expedite the construction of your project.

With best personal regards, I remain,

Yours very truly,

HOLIDAY INNS OF AMERICA, INC.

Raymond C. Williams
Vice President-Construction

CC: Mr. Alfred Kastner, Architect
Mr. Jack Ladd, Franchise Sales
Mr. Carl Webb
Mr. Dudley Beal

DEFENDANTS' EXHIBIT 43

October 1, 1959

Mr. Frank Perper
5319 Nebraska Avenue, N.W.
Washington, D.C.

Dear Frank:

I have just talked with Jeff Mann, who told me of his conversation with you.


There should be absolutely no doubt in your mind that when we agreed for you to have the franchise for the location you bought on Shirley Highway that it was for that specific location. You will even recall that I said it was possible that we might even build a Holiday Inn less than one-half mile from you adjoining the Marriott Motel. The franchise you have for Washington is only for the corner of Shirley Highway and Glebe Road. It does not have any radius or area whatsoever.

Kindest personal regards,

Yours very truly,

Kemmons Wilson

DEFENDANTS' EXHIBIT 45


 Holiday Inn

OF RICHMOND

 PHONES ELg 82396 & ELg 82333 • TELETYPE RICHMOND, VA. 540
 5221 BROOK RD. • HWY 1 NO. OF RICHMOND • RICHMOND 22, VIRGINIA

Oct 2

-ED

8 1966

Dear Ken

I am happy to
 received this letter dated Oct 1st
 I told the investors including
 Mr Margolis that no one could
 have gotten this franchise
 because you had told me
 you may want to build at
 some future date & you there
 for wanted me to have this
 franchise which I agree to accept
 from Mr Margolis is not
 with me on a future deals
 so if ever he or anyone

★ YOUR HOST FROM COAST TO COAST

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from the original bound volume

else wants a Washington franchise
 will you let me know first
 or give me 10 days to decide.
 I want you to make me
 this promise as you know
 I have been watching for a
 location, but I will offer
 the deal to you first & if
 you don't except. then
 allow me to take it..
 ("ill you give me your promise)
 on this.

I am in the work's on
 making a deal in Atlantic
 City (The play ground of the world)
 Ground Rent \$100,000, expect to
 get a \$1,500,000 mortgage.
 Hoping this finds you & your
 family well.

Frank
 RECEIVED
 OCT 5 1933

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from the original bound volume

[Defendants' Exhibit 45, cont'd]

June 23, 1959

Mr. Julian Savage
Julian Savage and Company
815 - 15th Street, N.W.
Washington 5, D.C.

Dear Mr. Savage:

In reply to your letter of June 6th, I am sure that by this time you have received a copy of the telegram I sent to Frank Perper, c/o Bernard Margolis.

I would appreciate your bringing me up to date as to what has transpired since.

Yours very truly,

Kemmons Wilson

[Defendants' Exhibit 45, cont'd]

JULIAN SAVAGE AND COMPANY
815 - 15th Street, N.W.
Washington 5, D. C.

June 6, 1959

Mr. Kemmons Wilson
Chairman of the Board
Holiday Inns of America, Inc.
3736 Lamar Avenue
P.O. Box 7127
Memphis, Tennessee

Re: Shirley Highway Site

Dear Mr. Wilson:

Messrs. Robert Weiss and Jacob Broidie came away from their meeting with you with the understanding that the Holiday Inns of America, Inc. would hold a franchise for us for the site at the corner of Shirley Highway and Glebe Road in Arlington, Virginia. The information which we have been able to obtain regarding the South Gate motel

across the street is that their recent occupancy rate has been approximately 90% and that they anticipate an average occupancy rate of 70% for the year.

We have had preliminary plans and specifications prepared and will submit them for a loan commitment on Monday. As quickly as possible, which should be before July 1, we should be in a position to apply formally for the franchise.

Will you kindly confirm to us that you are holding the franchise for this site together with the area, except as to your company owned motel site, pending our formal application.

Very truly yours,

JULIAN SAVAGE AND COMPANY

/s/ Julian Savage

cc: Bernard Margolius
Robert Weiss

[Defendants' Exhibit 45, cont'd]

DON'T SAY IT WRITE IT

Memo to: Jack Ladd
Raymond Williams

From: Kemmons Wilson Date October 8, 1959

re: Frank Perper says he is sending in the finished plans on the Shirley Highway in Washington for our approval. Will you please rush them out as he is in a hurry to get started before the bad weather.

Holiday Inns of America, Inc.

DEFENDANTS' EXHIBIT 46

June 13, 1960

Mr. Frank Perper
5319 Nebraska Avenue, N.W.
Washington, D.C.

Dear Frank:

Now that all the problems seem to be pretty well under control in connection with the Arlington location, two copies of the License Agreement are enclosed for your execution. Please sign the inside and the back of both copies and return them to us, and we will then have our officers execute them and return the original to you.

Sincerely,

HOLIDAY INNS OF AMERICA, INC.

Charles M. Collins
Vice President and General Counsel

DEFENDANTS' EXHIBIT 47

June 23, 1960

Mr. Frank Perper
5319 Nebraska Avenue, N.W.
Washington, D. C.

Dear Mr. Perper:

Several days ago we received two copies of the license agreement for Arlington, Virginia wherein you had signed the addendum to the license agreement but had not signed the license agreement on the back page. It has been noted that you also wrote in on the first page of the license agreement that your licensed territory was Arlington, Virginia and Washington, D. C. In order that there may not be any misunderstanding concerning

your licensed territory let me repeat. Your licensed territory is for the specific location only upon which the Holiday Inn is situated. You do not have either the counties or the cities of Arlington, Virginia and Washington, D. C. It was a good try, but it didn't work. Please initial the change in the description of the licensed territory on the first page and also sign the back page of both agreements and return them to us and we will then send the executed agreement back to you.

Yours very truly,

HOLIDAY INNS OF AMERICA, INC.

/s/ Charles M. Collins
Vice President and General Counsel

I resent the remark (it didn't work). I want you to know that I did not try to sneak or otherwise. It so happens my first letter was marked Washington.

DEFENDANTS' EXHIBIT 48

June 30, 1960

Mr. Frank Perper
5319 Nebraska Avenue, N.W.
Washington, D. C.

Re: Arlington, Virginia

Dear Mr. Perper:

Enclosed is the original and copy of your franchise license agreement for Arlington, Virginia which you returned to our office several days ago. If you will please sign on the back pages of these two instruments at the place indicated by the red check mark and have your signature witnessed, and return them to us in the enclosed stamped envelope, we will complete the original and send it to you via Airmail.

Thank you for your assistance in this matter.

Sincerely,

HOLIDAY INNS OF AMERICA, INC.
Secretary in Legal Department

DEFENDANTS' EXHIBIT 49

June 30, 1960

Holiday Inns of America, Inc.
3736 Lamar Avenue
Memphis, Tennessee

Gentlemen:

In accordance with our oral understanding, I wish to advise you that the franchise holders of the Arlington, Virginia Holiday Inn have entered into a lease agreement for the leasing of the Inn to Whitestone Motor Inn, Inc., of which Mr. Norman A. Shapiro is the president. The tenant and Mr. Shapiro will operate the Arlington Holiday Inn in accordance with the rules and regulations and policies of Holiday Inns of America, Inc., and it is our desire and request that you acknowledge him as the operator-tenant of this Holiday Inn and send all communications pertaining to this particular Inn to him in care of the Arlington, Virginia, Holiday Inn, and to me at Suite 309 Wire Building, 1000 Vermont Avenue, N.W., Washington 5, D. C.

Mr. Shapiro's acknowledgement of this understanding is set forth hereunder and it would be appreciated if you would acknowledge and accept this understanding.

Sincerely yours,

HOLIDAY INN OF ARLINGTON

By /s/ Frank M. Perper

I, Norman A. Shapiro, personally, and as president of Whitestone Motor Inn, Inc., do hereby join in the foregoing request of Holiday Inn of Arlington and do acknowledge that the Inn will be operated in accordance with the rules and regulations of the license agreement issued by Holiday Inns of America, Inc.

/s/ Norman A. Shapiro

WHITESTONE MOTOR-INN, INC.

By /s/ Norman A. Shapiro
President

APPROVED AND ACCEPTED:
HOLIDAY INNS OF AMERICA, INC.

By /s/ Charles M. Collins
Vice President

DEFENDANTS' EXHIBIT 50

LEASE FOR HOLIDAY INN SIGN

THIS AGREEMENT, made this 25th day of April, 1961, between HOLIDAY INNS OF AMERICA, INC., hereinafter called LESSOR, and Frank Perper, Harold Perper and Edwin Cohen of 5319 Nebraska Ave., N.W., Washington, D. C. and 9101 E. Bay Harbor Drive, Apt. 301, Miami, Florida, hereinafter called LESSEE.

WITNESSETH:

LESSOR does hereby lease unto LESSEE, and LESSEE agrees to take a special electrical advertising SIGN known as the HOLIDAY INN SIGN, hereinafter called SIGN.

1. DESCRIPTION: The SIGN is the standard HOLIDAY INN SIGN used throughout the National System of HOLIDAY INNS OF AMERICA, INC. The specifications for said SIGN are contained in the office of BALTON &

SONS, INC., Memphis, Tennessee and are incorporated herein by reference as if set out herein verbatim.

2. INSTALLATION: LESSOR agrees to install said SIGN on premises designated by LESSEE as Glebe Road and Shirley Highway, Arlington, Virginia. LESSEE agrees to pay all freight charges for the porcelain enamel, neon and erection materials for said SIGN from the source of supply to the installation site. LESSEE agrees to provide a foundation and steel frame acceptable to LESSOR for the mounting of the SIGN. LESSEE agrees to supply feed and ground wires of suitable electrical capacity to the location of the SIGN. LESSEE agrees to supply electrical current to the SIGN and provide both an electrical 30-circuit panel and service therefor as shown on the specifications.

3. TERM: This lease shall extend for a period of SIXTY (60) MONTHS commencing on the first day of the month immediately following installation. The lease shall renew from year to year thereafter for terms of one year unless either party shall notify the other in writing thirty (30) days before renewal period that the renewal period shall not be effective.

ONE HUNDRED FORTY & NO/100 (\$140.00)

4. RENT: LESSEE shall pay as rental ~~TWO HUNDRED TEN (\$210.00)~~ DOLLARS per month during the first five (5) year period of this lease in advance at the office of the LESSOR.

TWENTY-FIVE AND NO/100 (\$25.00)

LESSEE shall pay as rental ~~SEVENTY (\$70.00)~~ DOLLARS per month for any renewal period after the first five (5) year period hereof.

Rental payments shall commence the second month following the month of installation and shall be due and payable the first day of said month and the first day of each succeeding month thereafter and shall bear interest after maturity at six (6%) percent per annum.

5. MAINTENANCE: LESSOR shall maintain and service the SIGN, including all necessary repairs, except replacement of electric bulbs, in accordance with specifications of Item No. 6 hereafter.

Letters for the attraction panel shall be furnished by the LESSEE.

6. MAINTENANCE SPECIFICATIONS:

Paint fillers and bend backs.

Furnish and install renewal Neon tubes.

Furnish and install transformers.

Oil and adjust flasher.

Render prompt inspection upon LESSEE'S request.

LESSOR will not be responsible for radio or television interference.

7. TRADEMARK & SERVICE MARK: LESSEE does hereby acknowledge that all trademarks, patent rights or service mark rights existing or applied for to said SIGN or which may be applied for in the future shall remain the sole and exclusive property of the LESSOR and that the LESSEE acquires no rights or interest thereto by reason of this Agreement.

8. INSURANCE: LESSOR warrants that it will keep in full force and effect during the full term of this lease or any extension thereof, a Public Liability and Property Damage Insurance Policy with minimum limits of \$100,000 per person, \$300,000.00 per accident and \$5,000.00 property damage to protect LESSEE from claims of third persons for personal injuries and/or property damage occasioned by the falling of said SIGN.

LESSOR shall repair all direct losses or damages to the LESSEE'S SIGN from fire and lightning or wind-storm.

9. TAXES: The LESSEE agrees to indemnify LESSOR for any Federal, State or Municipal taxes that may be assessed against LESSOR for the SIGN or use thereof or upon this Agreement or the payments made there-

on, including but not limited to sales or use taxes which may be assessed in the State where the SIGN is erected. In the event the SIGN should be assessed jointly with other SIGNS of the LESSOR the LESSEE agrees to pay a proportionate share of said tax as determined by LESSOR upon the presentation of a statement for the amount thereof.

10. **DAMAGE OR DESTRUCTION OF SIGN:** In the event of damage to or destruction of the SIGN, LESSOR shall have the right at its option either to rebuild or repair the SIGN, extending the term of this Agreement, for such period of time as the SIGN may be unavailable for use by LESSEE, or to terminate this Agreement, in which event LESSEE shall not be obligated to make any further rental payments hereunder, and shall be entitled to the return of any portion of the deposit not applied to payment of rentals or other sums becoming due hereunder prior to such termination; provided, however, that LESSEE shall be responsible for damage to or destruction of the SIGN caused by or resulting from any act of negligence of LESSEE, its agents or employees.

11. **REMOVAL OF SIGN:** The SIGN shall at all times be deemed personal property, and shall not by any reason of attachment or connection to any realty become or be deemed a fixture or appurtenance to such realty and shall at all times be severable therefrom, and shall be and remain at all times the property of the LESSOR, free from any claim or right of LESSEE except as herein provided. Upon termination of this Agreement, or any extension thereof, for any cause, LESSOR shall have the right, in addition to any other rights LESSOR may have hereunder, or at law, to enter upon the premises of the LESSEE and to remove the SIGN from the premises where installed, and LESSEE agrees to surrender and deliver possession thereof.

12. **BREACH OF CONTRACT:** It is mutually recognized that the SIGN is not an article of general trade or

utility, but is designed and is to be constructed, installed and maintained at the request of and for the special distinctive uses and purposes of the LESSEE, and in compliance with a License Agreement heretofore on the 25th day of April, 1961, entered into between the LESSOR and LESSEE, which agreement is incorporated herein by reference as if set out herein verbatim; that the SIGN is of no value to LESSOR except as so used, and that it is a material consideration to LESSOR in entering into this Agreement that LESSEE shall continue to use the SIGN as contemplated; and it is expressly agreed that if LESSEE shall breach any of the terms, provisions or agreements contained herein, or contained in the License Agreement mentioned above, or if during the term of this Agreement, or any extension hereof, bankruptcy, debtor or insolvency proceedings are commenced by or against LESSEE, or if LESSEE makes an assignment for the benefit of creditors, or if a Receiver is appointed to take possession of the business of LESSEE, or if action is taken to accomplish this end, or if LESSEE discontinues business in the premises where the SIGN is located, or sells or files, or there is filed on its behalf, notice of intention to sell or mortgage under the Code of Tennessee, or similar statute of another State, or transfers its business or a material part thereof, voluntarily or involuntarily, or if continued use of the SIGN is prohibited for any reason whatsoever, then and in any such event, all of the unpaid rents to the end of this Agreement, or any extension thereof, shall, without notice or demand be at once accelerated and become due and payable and all rights and interest of LESSEE in said SIGN shall thereupon terminate.

In the event of default in any terms or conditions hereunder, LESSEE agrees to pay LESSOR a reasonable attorney fee for the enforcement of any of the terms or conditions hereof.

13. **WAIVER OF BREACH:** Time and the punctual performance of each and all the terms, provisions and

agreements hereof are of the essence of this Agreement except as herein otherwise expressly provided. No waiver by either party hereto of the non-performance of any breach of any term, provision, condition or agreement hereof, or any default hereunder, shall be construed to be, or operate as, a waiver of any subsequent non-performance, breach or default.

14. TRANSFER OF AGREEMENT: LESSOR shall be entitled to assign the unpaid balance of the rent herein provided to be paid, together with this lease, without notice to LESSEE, and LESSEE shall be obligated to pay the said amount when and as due to such Assignee, but Assignee shall not thereby be construed to have assumed any of the obligations or agreements on the part of LESSOR to be carried out and performed, but neither shall such assignment operate to in anywise release or discharge LESSOR from LESSOR'S obligation to carry out all of the agreements herein provided on the part of LESSOR to be carried out and performed. All of the terms, provisions and agreements hereof shall be binding upon the successors, assigns, or legal representatives of the parties, except as hereinabove provided, but the interest of LESSEE herein shall not be transferable, without the written consent of LESSOR.

15. PERMISSION: LESSEE will apply for all necessary permits from public authorities for the erection of the sign and pay for the same and LESSOR does not assume responsibility for obtaining the same or preventing the revocation.

IN WITNESS WHEREOF, the parties have duly executed this Agreement the day and year above written.

/s/ Frank Perper

/s/ Harold Perper

/s/ Edwin Cohen

LESSEE

ACCEPTED:

HOLIDAY INNS OF AMERICA, INC.

/s/ Charles M. Collins
Vice President

DEFENDANTS' EXHIBIT 55

October 31, 1960

The Prudential Insurance
Company of America
Richmond, Virginia

Gentlemen:

Mr. Frank M. Perper has contacted our office and requested that we write you and state in further detail the position of your company in the event our license agreement with him should become in default.

I have been authorized to write you and state that while The Prudential Insurance Company of America's first mortgage is in effect upon the Holiday Inn being built by Mr. Perper at Arlington, Virginia, and prior to canceling the license agreement with Mr. Perper because of licensee's default thereunder, Holiday Inns of America, Inc. agrees to notify The Prudential Insurance Company of America of any default of licensee and to give The Prudential Insurance Company of America thirty (30) days time in which to cure or cause the default to be cured. If your Company should acquire the property through foreclosure or by conveyance in lieu thereof, your company shall have a thirty (30) day option to continue the license agreement providing your company cures any existing default by licensee and assumes the licensee's covenants and agreements so long as it owns the premises. However, in order to avoid any misunder-

standing at a later date, I want to clearly set out that if at foreclosure or by conveyance in lieu thereof the property should become the property of any third party that neither licensee nor The Prudential Insurance Company of America has any right or authority to sell, transfer, or assign or in any manner convey to that third party the license agreement with Holiday Inns of America, Inc.

Our company has full confidence that if your company should ever take over the operation of the Holiday Inn in question that your company would abide by and maintain all of our standards and requirements. The transfer of our license agreement to any third party is a matter which is entirely within the judgment and discretion of our company. Our policy in this regard has been clearly made known to representatives of other branches of your company, and I feel confident you will understand our reasoning.

If you should need any additional information, please let us hear from you and we will be happy to assist any-way possible.

Sincerely,

HOLIDAY INNS OF AMERICA, INC.

Executive Vice President

DEFENDANTS' EXHIBIT 56

Arlington, Virginia

LEASE FOR HOLIDAY INN SIGN

THIS AGREEMENT, made this 22 day of June 1960, between HOLIDAY INNS OF AMERICA, INC., hereinafter called LESSOR, and Frank Perper of 5319 Nebraska Ave. N.W., Washington, D.C. hereinafter called LESSEE.

WITNESSETH:

LESSOR does hereby lease unto LESSEE, and LESSEE agrees to take a special electrical advertising SIGN known as the HOLIDAY INN SIGN, hereinafter called SIGN.

1. DESCRIPTION: The SIGN is the standard HOLIDAY INN SIGN used throughout the National System of HOLIDAY INNS OF AMERICA, INC. The specifications for said SIGN are contained in the office of BALTON & SONS, INC., Memphis, Tennessee and are incorporated herein by reference as if set out herein verbatim.

2. INSTALLATION: LESSOR agrees to install said SIGN on premises designated by LESSEE as Glebe Road and Shirley Highway, Arlington, Va. LESSEE agrees to pay all freight charges for the porcelain enamel, neon and erection materials for said SIGN from the source of supply to the installation site. LESSEE agrees to provide a foundation and steel frame acceptable to LESSOR for the mounting of the SIGN. LESSEE agrees to supply feed and ground wires of suitable electrical capacity to the location of the SIGN. LESSEE agrees to supply electrical current to the SIGN and provide both an electrical 30-circuit panel and service therefor as shown on the specifications.

3. TERM: This lease shall extend for a period of SIXTY (60) MONTHS commencing on the first day of the month immediately following installation. The lease shall renew from year to year thereafter for terms of one year unless either party shall notify the other in writing thirty (30) days before renewal period that the renewal period shall not be effective.

ONE HUNDRED FORTY & NO/100 (\$140.00)

4. RENT: LESSEE shall pay as rental ~~TWO HUNDRE~~
~~TEEN DOLLARS~~ DOLLARS per month during the first five (5) year period of this lease in advance of the office of the LESSOR.

TWENTY-FIVE AND NO/100 (\$25.00)

LESSEE shall pay as rental ~~SEVENTEEN DOLLARS~~ DOLLARS per month for any renewal period after the first five (5) year period hereof.

Rental payments shall commence the second month following the month of installation and shall be due and payable the first day of said month and the first day of each succeeding month thereafter and shall bear interest after maturity at six (6%) percent per annum.

5. MAINTENANCE: LESSOR shall maintain and service the SIGN, including all necessary repairs, except replacement of electric bulbs, in accordance with specifications of Item No. 6 hereafter.

Letters for the attraction panel shall be furnished by the LESSEE.

6. MAINTENANCE SPECIFICATIONS:

Paint Fillers and bend backs.

Furnish and install renewal Neon tubes.

Furnish and install transformers.

Oil and adjust flasher.

Render prompt inspection upon LESSEE'S request.

LESSOR will not be responsible for radio or television interference.

7. TRADEMARK & SERVICE MARK: LESSEE does hereby acknowledge that all trademarks, patent rights or service mark rights existing or applied for to said SIGN or which may be applied for in the future shall remain the sole and exclusive property of the LESSOR and that the LESSEE acquires no rights or interest thereto by reason of this Agreement.

8. INSURANCE: LESSOR warrants that it will keep in full force and effect during the full term of this lease or any extension thereof, a Public Liability and Property Damage Insurance Policy with minimum limits of \$100,000.00 per person, \$300,000.00 per accident and \$5,000.00 property damage to protect LESSEE from claims of

third persons for personal injuries and/or property damage occasioned by the failling of said SIGN.

LESSOR shall repair all direct losses or damages to the LESSEE'S SIGN from fire and lightning or wind-storm.

9. TAXES: The LESSEE agrees to indemnify LESSOR for any Federal, State or Municipal taxes that may be assessed against LESSOR for the SIGN or use thereof or upon this Agreement or the payments made thereon, including but not limited to sales or use taxes which may be assessed in the State where the SIGN is erected. In the event the SIGN should be assessed jointly with other SIGNS of the LESSOR the LESSEE agrees to pay a proportionate share of said tax as determined by LESSOR upon the presentation of a statement for the amount thereof.

10. DAMAGE OR DESTRUCTION OF SIGN: In the event of damage to or destruction of the SIGN, LESSOR shall have the right at its option either to rebuild or repair the SIGN, extending the term of this Agreement for such period of time as the SIGN may be unavailable for use by LESSEE, or to terminate this Agreement, in which event LESSEE shall not be obligated to make any further rental payments hereunder, and shall be entitled to the return of any portion of the deposit not applied to payment of rentals or other sums becoming due hereunder prior to such termination: provided, however, that LESSEE shall be responsible for damage to or destruction of the SIGN caused by or resulting from any act of negligence of LESSEE, its agents or employees.

11. REMOVAL OF SIGN: The SIGN shall at all times be deemed personal property, and shall not by any reason of attachment or connection to any realty become or be deemed a fixture or appurtenance to such realty and shall at all times be severable therefrom, and shall be and remain at all times the property of the LESSOR, free from any claim or right of LESSEE except as here-

in provided. Upon termination of this Agreement, or any extension thereof, for any cause, LESSOR shall have the right, in addition to any other rights LESSOR may have hereunder, or at law, to enter upon the premises of the LESSEE and to remove the SIGN from the premises where installed, and LESSEE agrees to surrender and deliver possession thereof.

12. BREACH OF CONTRACT: It is mutually recognized that the SIGN is not an article of general trade or utility, but is designed and is to be constructed, installed and maintained at the request of and for the special distinctive uses and purposes of the LESSEE, and in compliance with a License Agreement heretofore on the 15 day of January, 1960, entered into between the LESSOR and LESSEE, which agreement is incorporated herein by reference as if set out herein verbatim; that the SIGN is of no value to LESSOR except as so used, and that it is a material consideration to LESSOR in entering into this Agreement that LESSEE shall continue to use the SIGN as contemplated; and it is expressly agreed that if LESSEE shall breach any of the terms, provisions or agreements contained herein, or contained in the License Agreement mentioned above, or if during the term of this Agreement, or any extension hereof, bankruptcy, debtor or insolvency proceedings are commenced by or against LESSEE, or if LESSEE makes an assignment for the benefit of creditors, or if a Receiver is appointed to take possession of the business of LESSEE, or if action is taken to accomplish this end, or if LESSEE discontinues business in the premises where the SIGN is located, or sells or files, or there is filed on its behalf, notice of intention to sell or mortgage under the Code of Tennessee, or similar statute of another State, or transfers its business or a material part thereof, voluntarily or involuntarily, or if continued use of the SIGN is prohibited for any reason whatsoever, then and in any such event, all of the unpaid rents to the end of this Agreement, or any extension thereof, shall, without notice or

demand be at once accelerated and become due and payable and all rights and interest of LESSEE in said SIGN shall thereupon terminate.

In the event of default in any terms or conditions hereunder, LESSEE agrees to pay LESSOR a reasonable attorney fee for the enforcement of any of the terms or conditions hereof.

13. **WAIVER OF BREACH:** Time and the punctual performance of each and all the terms, provisions and agreements hereof are of the essence of this Agreement except as herein otherwise expressly provided. No waiver by either party hereto of the non-performance of any breach of any term, provision, condition or agreement hereof, or any default hereunder, shall be construed to be, or operate as, a waiver of any subsequent non-performance, breach or default.

14. **TRANSFER OF AGREEMENT:** LESSOR shall be entitled to assign the unpaid balance of the rent herein provided to be paid, together with this lease, without notice to LESSEE, and LESSEE shall be obligated to pay the said amount when and as due to such Assignee, but Assignee shall not thereby be construed to have assumed any of the obligations or agreements on the part of LESSOR to be carried out and performed, but neither shall such assignment operate to in anywise release or discharge LESSOR from LESSOR'S obligation to carry out all of the agreements herein provided on the part of LESSOR to be carried out and performed. All of the terms, provisions and agreements hereof shall be binding upon the successors, assigns, or legal representatives of the parties, except as hereinabove provided, but the interest of LESSEE herein shall not be transferable, without the written consent of LESSOR.

15. **PERMISSION:** LESSEE will apply for all necessary permits from public authorities for the erection of the sign and pay for the same and LESSOR does not as-

sume responsibility for obtaining the same or preventing the revocation.

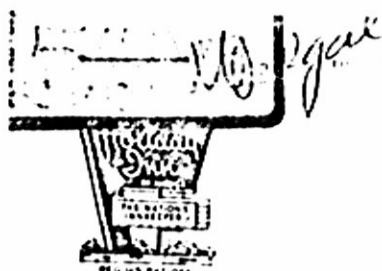
IN WITNESS WHEREOF, the parties have duly executed this Agreement the day and year above written.

/s/ Frank M. Perper
Lessee

ACCEPTED:

HOLIDAY INNS OF AMERICA, INC.

By /s/ Charles M. Collins
Vice President



Holiday Inns

ARLINGTON, VIRGINIA
MERICA, INC.

EXECUTIVE OFFICES: 3736 LAMAR AVENUE • P. O. BOX 7127 • MEMPHIS 18, TENN.

License Agreement

FILED

MAR 28 1965

ROBERT M. STEARNS, Clerk

THIS AGREEMENT entered into at Memphis, Tennessee, this 25th day of April, 1965, by and between HOLIDAY INNS OF AMERICA, INC., a Tennessee corporation, with principal office at Memphis, Tennessee, (hereinafter referred to as "Licensor"), and FRANK PERPER, HAROLD PERPER and EDWIN COHEN whose address is 5319 Nebraska Ave., NYC City of Washington, State of D. C. (hereinafter referred to as "Licensee"), and 9101 E. Bay Harbor Drive, Apt. 301, Miami, Florida

WITNESSETH: That,

Licensor has developed and perfected a plan or system (hereinafter referred to as the "System," or as the "Holiday Inns System") for providing to the public, and especially to the motoring public, an inn service, including lodging, food and other accommodations, of distinctive nature, of high quality, and of other distinguishing characteristics, all as initially placed in operation by Licensor and provided under the name "Holiday Inn," in and around Memphis, Tennessee. The distinguishing characteristics of said System, and of the inn service provided pursuant thereto, include (but are not limited to) the following:

(1) The words "HOLIDAY INN," "Holiday Inn Hotel," "Holiday Inns," "Holiday Inns of America," or other combinations of said words, either alone, or in combination or association with the color scheme or pattern, building design, insignia, slogans, signs, emblems, trade names, trade marks, service marks, or with the inn service, now or hereafter provided or used by Licensor at or near Memphis, Tennessee, or as part of the said System, or in association with the idea of a nationwide service of inns all providing standardized, high quality, distinctive inn service;

(2) A distinctive and readily recognizable design and construction of the structures comprising such Inn and including the restaurant and other supplementary buildings;

(3) The color scheme, pattern and design, and the color combinations of the exteriors and of the interiors of said structures, and on certain of the furnishings therein;

(4) Appearance of certain of said structures and the distinctive trade marks, service marks, design, slogans, name and matter now or hereafter displayed thereon, or used as part thereof;

(5) The trade marks, trade names, service marks, insignia, emblems, signs, designs, color and patterns, and other distinctive features, as now or hereafter in use at Holiday Inns in and around Memphis, or as part of the System, both as identifying the System of inns, and as identifying the type, character, and standard or quality of service which the public may expect to receive at such inns;

(6) Style, color and character of equipment, furnishings and appliances used in and about the Inn and the equipment and supplies bearing the name "Holiday Inn," and/or other distinguishing characteristics;

(7) Methods of operation, advertising service and publicity, and credit card service when established;

(8) A standardized, uniform (or as nearly so as may be) inn service, identified with the words "Holiday Inn" and with the other distinguishing features, trade marks, and service marks of the System, for providing lodging, food and other accommodations and conveniences, parking for automobiles, close proximity to filling station facilities, and for providing such inn service in accordance with fair and ethical policies and practices, and in accordance with high standards of efficiency, courtesy, and cleanliness, and of a distinctive nature and of high quality.

The Licensee desires to be licensed to provide the same inn service of the same distinctive nature and high quality and of the same distinguishing characteristics, as established and provided by Licensor, under and using the same trade marks, service marks, color pattern and scheme, signs, designs, and other distinguishing characteristics of the System, and as established and provided by Licensor. It is the intention of the parties that the inns to be operated by the Licensee under this Agreement, together with inns now or hereafter operated by Licensor and those operated or to be operated by other licensees under similar agreements, will form a National System of such inns. The success of such National System is dependent upon the continuing good reputation of each and every inn operated within the System and upon the continuing good will of the public toward the name "Holiday Inn," "Holiday Inn Hotel," "Holiday Inns" and "Holiday Inns of America," and towards the System and its distinguishing characteristics. The success of both parties to this Agreement, and of other licensees is directly affected by the business conduct of all licensees using the System. The Licensee, therefore, recognizes that adherence to the terms of this Agreement is a matter of mutual importance and consequence to Licensee, to Licensor, and to all other licensees. Accordingly, IT IS MUTUALLY CONVENANTED AND AGREED as follows:

FIRST: Licensor hereby grants to Licensee, subject to the terms and conditions hereof, a non-assignable, exclusive license to use said System in the construction and operation of one or more Holiday Inns within, and only within, the metropolitan area or areas, described as follows (hereinafter referred to as the "Licensed Territory"):

The Licensed Territory shall be only that specific site and location known as intersection of Globe Road and Shirley Highway, Arlington, Virginia.

It is understood and agreed that the fees and royalties required herein are for the operation of the Holiday Inn at the above specific location only, and as other Holiday Inns are developed, other fees and royalties shall become due and payable.

Licensor will not approve a site under any other License and will not itself operate a Holiday Inn, within said territory without Licensee's approval, so long as Licensee shall perform the agreements on its part herein contained.

SECOND: Licensee does acknowledge and recognize the Licensor's interest in, and exclusive right to, said System and to its distinguishing characteristics now, or from time to time hereafter, used as a part of, or in connection with or applicable to, said System, and in all service marks, trade marks, copyrights, service mark or trade mark registration, trade names, and patents now or hereafter applied for or granted in connection therewith, and also the exclusive right of Licensor to use and/or grant the right

DEFENDANTS' EXHIBIT 59

to others to use the name "Holiday Inn" in connection with the said System; and Licensee further recognizes and acknowledges the exclusive right of Licensor to grant this license and to grant licenses to others to use said System in the conduct of "Holiday Inns" under the said System; Licensee agrees neither to infringe upon, use or in any way to imitate the said System, or any of its distinguishing characteristics as above set forth, except under written license from the Licensor; and Licensee does hereby accept this license, and does covenant and agree to conduct the operation of inns in the licensed territory under the System, and in accordance with the terms and provisions of this license and of the Rules of operation of said System; Licensee does further covenant and agree as follows:

(a) To maintain a high moral and ethical standard and atmosphere at Licensee's "Holiday Inns"; to comply with all local, State, and Federal laws, ordinances, rules and regulations pertaining thereto; to maintain its premises and accommodations in a clean, safe and orderly manner; and to provide efficient, courteous and high quality Holiday Inn System service to the public, and to furnish Inn accommodations, services and conveniences of the same quality, type and distinguishing characteristics, as provided at the "Holiday Inns" in and around Memphis, to the end that the Inns operated by Licensee under this agreement shall each help to create good will among the public for "Holiday Inn" System inns as a whole, and that Licensor, Licensee, and each member of said System shall be benefited, and the public assured uniform efficient, courteous, high quality service on a standardized national basis;

(b) To pay to Licensor forthwith as a part of the consideration for the execution of this agreement by Licensor and in addition to all other sums required to be paid by Licensee, the sum of **Ten Thousand and No/100 (\$10,000)** Dollars

(c) To build at least one Holiday Inn within the licensed territory, and such additional Holiday Inns as may be deemed by it necessary and desirable (but if the licensed territory shall consist of or include a metropolitan area of 250,000 population or more, according to the 1950 census, then to build at least one Holiday Inn to serve each United States Highway within each such metropolitan area except that in no event shall Licensee be deemed to have agreed to build more than one room for each 2,000 population within its territory according to the 1950 census); provided, however, that the Licensee shall not be required to build upon any particular United States Highway, or to build any particular number of Inns hereunder, if at the time Licensee presents a Market Analysis of a nationally recognized Market Analyst satisfactory to Licensor, showing that such construction is not justified by market conditions. In the event of dispute between Licensee and Licensor as to any matter arising from such survey or the absence thereof, or if Licensor disagrees with such survey, then Licensor and Licensee agree to accept the recommendations of the Executive Committee of Holiday Inns National Association with respect thereto. Each Inn shall provide a minimum of fifty rooms, each shall be designed and built substantially in accordance with the plans and specifications used by Holiday Inns at Memphis and such modifications thereof as Licensor may recommend (subject only to necessary variations required by local building and other applicable laws and regulations and by local conditions) and each shall exhibit the distinctive characteristics of said System in such manner as to be readily recognizable by the public as a part of said System; the location, plot plan, and the detailed plans and specifications, for each such inn shall be submitted to and approved by Licensor prior to the commencement of work; Licensee agrees that Licensee will not, directly or indirectly, own any interest in, operate, or be in any manner connected with or associated with, any inn, hotel or motel, within the licensed territory, during the period of this license, except Holiday Inns licensed under this License;

(d) To commence the construction of the first of such Inns on or before Open and Operating and to complete such construction and commence operation under the System on or before ---;

and thereafter to commence construction of at least one additional Inn within each yearly period following the date first mentioned in this Part "Second" "d" and to complete the same within six months after commencement of construction, until the entire number of Inns which Licensee agrees to build under Part "Second" "(c)", or such lesser number, if any, as may be justified in the market analysis shall have been completed (except as any of such dates or times may be extended by mutual agreement and except for delays occasioned by war, acts of God, and matters beyond Licensee's control); if the Licensee does not commence construction within the Licensed Territory by the dates required hereunder, or having so commenced does not prosecute same with reasonable diligence and complete the same by the date required hereunder, this license and all rights hereunder, may at Licensor's option be cancelled as to such territory, and the consideration paid for this license shall be forfeited to Licensor, time being of the essence. In the event of such cancellation Licensor shall have the right to issue an additional license or licenses for said territory covering the Inns Licensee has agreed to build but has not built hereunder; but no such additional licenses shall be granted for the construction of any Inn to serve a highway served by any Inn constructed by Licensee under this agreement. Licensee's right and license to operate any "Holiday Inn" then built and in operation by it shall not be affected, provided Licensee shall not be in violation of any other provision of this Agreement;

(e) To pay to Licensor at Memphis, Tennessee, within fifteen (15) days after the end of each month, commencing with the month in which Licensee opens his Holiday Inn and continuing for the life of this agreement, as a royalty or further consideration for this license, an amount equal to ten (10¢) - - - - - cents a night times the total number of rooms in Licensee's Holiday Inn or Inns within the Licensed Territory.

(f) To pay to Licensor at the same time an additional sum in the amount of five (5¢) cents per room per night (or such greater sum as shall be, from time to time, required by Licensor), but only upon recommendation of the Advertising Committee of Holiday Inns National Association, approved in writing by a majority of the members of such association, or by a majority of those members present at a duly called meeting of the Association, as a payment upon national advertising expenses, all of which sums payable under this sub-paragraph (f) shall be deposited by Licensor in a separate account under its control but designated "Holiday Inn National Advertising Account" to be used by Licensor solely for the publication and distribution of directories, pamphlets and other printed advertising matter, for radio, T-V, magazine, newspaper and other forms of advertising media, and for technical and professional advice in connection therewith; for advertising agency commissions; and for any other advertising, promotional or related purposes or materials, which are approved by a majority of the Advertising Committee of Holiday Inns National Association as desirable to advertise and promote "Holiday Inns" nationally; each Licensee is responsible for Licensee's own local advertising;

(g) To feature in the operation of all of Licensee's Inns covered by this license, and in all advertising matter, the words "Holiday Inn," together with the distinguishing characteristics of the System, in substantially the same combination, arrangement, and manner as displayed and used in the "Holiday Inns" in and around Memphis, so that Licensee's Inns will be readily recognizable by the public as Inns of the same appearance as the "Holiday Inns" constructed in and around Memphis, Tennessee, and readily recognizable by the public as part of the national System of "Holiday Inns"; to erect a large sign, using neon lighting if allowed by local law, of the same design, color scheme and pattern and appearance as used by "Holiday Inns" in and around Memphis, Tennessee (subject only to such modifications, if any, as may be required by local law) and using the words "Holiday Inn," the same star, and the same other distinctive, distinguishing features and characteristics on said sign; to construct on the exterior of Licensee's Inns using the distinctive color scheme and pattern of the System, the words "Holiday Inn" and the service marks, trade marks, slogans, insignia, and other identifying distinctive features as now or hereafter used upon "Holiday Inns" at Memphis as aforesaid; to employ such service marks, trade marks, distinctive color scheme and pattern in all exterior and interior decorating, and on all stationery, linens, towels, furniture, furnishings, advertising matter, signs or other articles, in substantially the same combination, arrangement and manner as used in said "Holiday Inns" in and around Memphis; if in Licensee's territory, there be a claim of prior use of the word "Holiday" in the name of any hotel, motel or Inn, then Licensee shall so use Licensee's own name, and such combinations and modification of "Holiday Inn" service marks, trade marks, trade names and slogans, as to clearly avoid any possible confusion between the Licensee's "Holiday Inn" and any such claimant; and Licensor shall defend the name "Holiday Inn" and the System against imitations or infringements, except that Licensee shall defend against any claim of prior use within the Licensed territory; and both other parties shall make every effort to protect, maintain and to advance the name "Holiday Inn," and the distinguishing characteristics in connection therewith, and the service marks, trade marks, trade names and slogans, as standing for, and as having a secondary meaning of, Inns operated under the said System only;

(h) That Licensee, in the use of the name "Holiday Inn," the service marks, trade marks, color scheme and pattern, signs and the System, and in Licensee's own advertising, shall identify Licensee as being the owner and operator of Licensee's particular "Holiday Inn" or "Holiday Inns" under license from Licensor; that the parties hereto are completely separate entities, are not partners, joint adventurers, or agents of the other in any sense, and neither has power to obligate or bind the other; that Licensee shall not use the words "Holiday Inn," or any combination of such words, in its corporate name or partnership name, if a corporation or partnership, nor allow the use thereof by others; that Licensee will sell or provide no products or services under the said service marks or trade marks, except inn service of lodging, foods, and other accommodations and conveniences for the public, of the same nature, type, quality and distinguishing characteristics as are sold or provided, or may hereafter be sold or provided at the "Holiday Inns" in and around Memphis Tennessee;

(i) To use every reasonable means within the Licensed Territory to encourage the use of "Holiday Inns" on a national basis by the traveling public;

(j) To promote and endeavor diligently to secure desirable applications for Holiday Inn National System Credit cards, in a conscientious effort to create new and reliable patrons of "Holiday Inn";

(k) To permit regular inspection of all accommodations, facilities, and procedures by accredited Holiday Inns' inspectors, for compliance with this agreement, and to give free lodging to any such inspector when on official duty for such time as may be reasonably necessary;

(l) To observe strictly the Rules of Operation as now established by Licensor, or as revised or amended by Licensor from time to time hereafter, the right of revision and amendment being reserved by Licensor; Licensor recognizes that the wisdom and practicality of rules for the operation of the System may require amendment from time to time as a result of experience and it, therefore, agrees to appoint, as set forth in Part Twelfth hereafter, a Committee on Rules of Operation, and agrees not to revise or add to the Rules of Operation except by action of Licensor's Board of Directors, following recommendation of a majority of such Committee on Rules of Operation;

(m) That this license is not exclusive, except in the Licensed Territory and under the conditions imposed herein, is personal to the Licensee, and is non-transferrable without the written consent of Licensor; that in the event Licensor shall consent, in writing, to the transfer hereof, the transferee shall be bound by each and all covenants and conditions herein contained and shall have no right to further transfer of this license, except with the written consent of Licensor; if this License shall be signed by Licensee as an individual, Licensor hereby agrees that, upon request of Licensee, it will approve assignment to a corporation of which Licensee shall be an officer, director, and a substantial stockholder.

(n) To file with Licensor not later than thirty (30) days following the close of each calendar quarter of each year during the life of this Agreement a statement of operations, showing the results of operations of Licensee's Holiday Inns during the calendar quarter preceding each such required filing date, and such other reports as Licensor may from time to time require,

on forms to be prescribed by Licensor.

THIRD: Licensor covenants and agrees:

(A) To make available to Licensee the privilege of consulting with Licensor's officials and staff upon problems relating to design, construction and operation of "Holiday Inn" hotels, so that Licensee will have available to it the experience of Licensor, and of other licensees relating to such problems;

(B) To supply as a guide to Licensee a copy of a set of plans and specifications for the erection of a "Holiday Inn"; to approve or disapprove each particular site, when proposed by Licensee;

(C) To supply sample plot plans and typical layouts;

(D) To examine, and to make recommendations in connection with approving the same, Licensee's detailed plans, specifications, and proposed plot plans;

(E) To make available to Licensee, upon request, all such information as Licensor may have from time to time with respect to prices of equipment, furniture, furnishings and supplies;

(F) To provide 30 days training in "Holiday Inn" methods to a manager, a housekeeper and a restaurant manager selected by Licensee. All such training shall be provided at or near Memphis (or such more convenient place as Licensor may designate), and Licensee shall be responsible for trainees' wages, room, board and traveling expenses during the training period;

(G) To make available to Licensee such information as Licensor may have as to financing (but Licensor does not in any way guarantee to obtain or provide mortgage financing for Licensee);

(H) To use every reasonable means of assisting Licensee to install methods of inn operation as conducted at "Holiday Inns" at or near Memphis, and under the System;

~~XX~~

(J) To encourage the use of "Holiday Inns" on a national basis by members of the public;

(K) To issue, from time to time, for distribution among travelers and "Holiday Inn" customers, a directory containing the names and addresses of all Licensees in good standing;

(L) To maintain supervision over Licensees, to assure compliance with "Holiday Inn" standards as established in the System from time to time, and in the Rules of Operation, and for that purpose to have traveling inspectors visit each Licensee a minimum of twice a year;

(M) To provide Holiday Inns National Association, with necessary and appropriate office space, at Memphis, rent free for a national office for the Association;

(N) To make available to Licensee, through sales or otherwise, at prices to be determined at the time, "Holiday Inn" System signs, decalcomania, forms, stationery, bulletins and procedures which at the time are being supplied by Licensor for use in the conduct of "Holiday Inns"; and to furnish recommendations for standardizing signs, letterheads, registration cards, statements, rate folders, and other similar material;

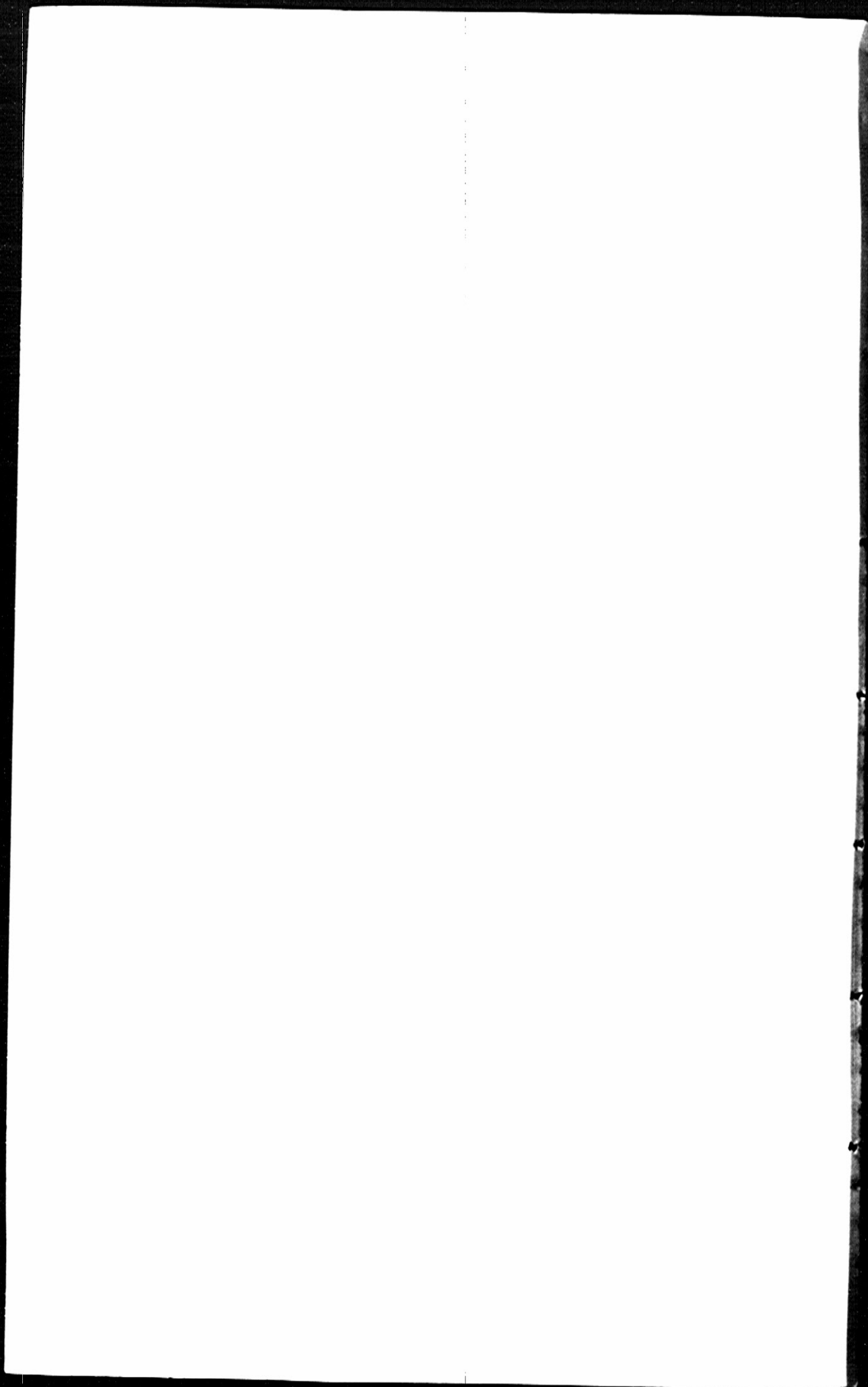
(O) To expend the sums received from Licensee pursuant to Part "Second" (f), of this agreement for the publication of a directory, and for national advertising and promotion, and as provided or authorized in the said Part "Second" (f).

FOURTH: Licensor expressly reserves the right to revise, amend and to change, from time to time, the said "System" or any part thereof, but agrees not to revise or amend the Rules of Operation except by action of its Board of Directors, following recommendation of a majority of the Committee on Rules of Operation appointed as set forth in Part Twelfth. Such "System" as so changed, revised or amended, from time to time, shall for all purposes be deemed to be the "System" referred to in this Agreement. Any and all improvements in said System developed by Licensee, Licensor, or other licensees, shall be and become the sole and absolute property of Licensor, and Licensor may incorporate the same in said System and shall have the sole and exclusive right to copyright, register and/or patent such improvements in Licensor's own name, and Licensee shall have no right to copyright, register and/or patent such improvements in Licensee's name; and Licensee shall have no right to use such improvements, except as set forth herein, provided, however, that in the event of the termination of this License, Licensee may continue to use any improvement which Licensee has himself developed, provided Licensee does not represent or indicate thereby that he is a Licensee or user of the System, or operator of a "Holiday Inn";

FIFTH: This agreement and license shall be in effect for a term commencing this date and continuing until terminated under Part Second "(d)" for failure to commence or proceed with construction or by one of the following acts or events:

(A) Licensee shall have the right to terminate this Agreement at any time upon giving six months prior written notice to Licensor; but, if such notice shall be given to take effect other than on a date four exact years, or any multiple of four exact years, from the date named in Part "Second", "(d)" as the date on or before which construction of all "Holiday Inns" licensed by this agreement is to be completed (which said four-year or multiple of four-year dates are hereafter referred to in this Part "Fifth" as "free termination dates"), then the Licensee shall pay with such notice an amount equal to one-half of the aggregate of such payments as would have become due under Part "Second" "(e)" and "(f)" of this Agreement between such effective date of termination and the next occurring "free termination date"; it is agreed that the above specified times are of the essence of this Agreement;

(B) After twenty years either party may terminate this agreement on any anniversary date hereof by giving nine months prior written notice; provided that Licensee shall have the option to renew this license on a year to year basis thereafter but any such renewal shall be upon all of the terms and provisions of license agreements then being used by Licensor;



Arlington, Virginia

ADDENDUM TO LICENSE AGREEMENT

For and in consideration of the mutual benefits to each party and other considerations hereinafter set out, the parties do agree that the additional provisions shall become a part of the License Agreement, and in the event of any conflict with the standard License Agreement form the provisions of this Addendum shall prevail.

13. Licensee shall not lease to or hire or retain in any manner for the management of any Holiday Inn within the Licensed Territory any person or firm who is in a similar or competitive type business or organization.

14. The owner or lessee of any Holiday Inn built or operated under this License Agreement shall not be an associate or associate member or affiliated in any manner with any organization, company or group, the primary purpose of which, either express or implied, is to set a standard for motels or hotels and/or to request or require its members to refer business to other members of that organization, company or group.

15. If Licensee at some future date transfers the License Agreement to a corporation in which the present Licensee does not have controlling interest, Licensor shall have the right to terminate this License Agreement if it so chooses. Licensor shall also have the right to terminate this License Agreement if at any time the controlling interest in the corporation to which this License Agreement may be transferred shall be sold or disposed of by the present Licensee.

16. Licensee agrees that if at any time in the future the License Agreement is transferred to a corporation and said corporation shall attempt to raise or secure funds by sale of stock or securities convertible into stock that said plans must be approved by Licensor prior to any offering or sale.

17. Licensee agrees that it will not begin construction of its Holiday Inn until complete plans and specifications have been examined and approved by Licensor.

18. Licensee agrees that whether he operates the restaurant himself or whether it is leased or sublet to others, Licensee agrees to be responsible for the restaurant in the proposed Holiday Inn, to maintain accommodations at an early hour for departure at breakfast and also to remain open a reasonably late hour for arrivals in the evening. Licensee further agrees to be responsible for the restaurant to furnish room service to all rooms of the Holiday Inn, to display Holiday Inn advertising material exclusively, such as the Directories, placemats, napkins, etc., and to conduct the entire operation of the restaurant compatible with and to the best interest of the Holiday Inn System.

WITNESS:

/s/ Frank Perper

/s/ Harold Perper

/s/ Edwin Cohen

ATTEST:

/s/ Ora Wood
Asst. Secy.

HOLIDAY INNS OF AMERICA, INC.

By /s/ William B. Walton
Executive Vice President

June 30, 1960

Holiday Inns of America, Inc.
3736 Lamar Avenue
Memphis, Tennessee
Gentlemen:

In accordance with our oral understanding, I wish to advise you that the franchise holders of the Arlington, Virginia Holiday Inn have entered into a lease agreement for the leasing of the Inn to Whitestone Motor Inn, Inc., of which Mr. Norman A. Shapiro is the president.

The tenant and Mr. Shapiro will operate the Arlington Holiday Inn in accordance with the rules and regulations and policies of Holiday Inns of America, Inc., and it is our desire and request that you acknowledge him as the operator-tenant of this Holiday Inn and send all communications pertaining to this particular Inn to him in care of the Arlington, Virginia, Holiday Inn, and to me at Suite 309 Wire Building, 1000 Vermont Avenue, N.W., Washington 5, D.C.

Mr. Shapiro's acknowledgment of this understanding is set forth hereunder and it would be appreciated if you would acknowledge and accept this understanding.

Sincerely yours,

HOLIDAY INN OF ARLINGTON

By /s/ Frank M. Perper

I, Norman A. Shapiro, personally, and as president of Whitestone Motor Inn, Inc., do hereby join in the foregoing request of Holiday Inn of Arlington and do acknowledge that the Inn will be operated in accordance with the rules and regulations of the license agreement issued by Holiday Inns of America, Inc.

/s/ Norman A. Shapiro

WHITESTONE MOTOR INN, INC.

By /s/ Norman A. Shapiro
President

APPROVED AND ACCEPTED:

HOLIDAY INNS OF AMERICA, INC.

By /s/ Charles M. Collins
Vice President

SUPPLEMENTAL JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,073

ROBERT B. WEISS, *Et Al.*
Appellants

v.

FRANK M. PERPER, *Et Al.*
Appellees

No. 20,074

BERNARD MARGOLIUS, *Et Al.*
Appellants

v.

FRANK M. PERPER, *Et Al.*
Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals
for the District of Columbia Circuit

FILED OCT 26 1966

Nathan J. Paulson
CLERK

(i)

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[Filed March 25, 1966]

DEFENDANT'S EXHIBIT 4

WESTERN UNION TELEGRAM

SY WWA194 NL Pd Washington, D.C. Sep. 30

Bernard Margolius

Suite 309 Wire Building, Washington, D. C.

At a meeting of the promotion group of the Shirley Highway Holiday Inn held this evening of which meeting you were advised but at which you were not present the letter of September 23 1959 addressed to you by Jeff Mann of Holiday Inn of America was discussed. Mr. Perper stated that he was in telephone conversation with Mr. Jeff Mann and Mr. Jack Ladd this afternoon. The subject matter and the questions raised in the letter to you were discussed by Mr. Perper with these gentlemen and all their questions were answered to their satisfaction. Mr. Mann asked Mr. Perper to advise you that a written letter in reply to his previous letter was not needed as he had received all the information requested. Mr. Perper further discussed with Jack Ladd the questions raised regarding the approval of the preliminary plans submitted by our architect and told Mr. Perper that he was satisfied the questions raised were properly to be taken care of.

Norman Finkelstein

EXCERPT FROM SECOND PRETRIAL STATEMENT

Although the plaintiffs at all times claimed a joint venture and the right of the joint venture to develop the area, when Frank M. Perper breached his fiduciary duty and started to take over the franchises in this area in the

names of himself and his sons, the plaintiffs instead of immediately suing him, decided that if each one could develop his own site they would avoid the litigation which otherwise would follow, and they have now discovered that Frank M. Perper, except for his connection with Holiday Inns of America, was of no value to them and that apparently he is not a proper type of person.

[Filed March 25, 1966]

DEFENDANT'S EXHIBIT 32

June 20, 1960

Mr. Burton H. Leibler
Helmsley-Spear, Inc.
60 E. 42nd Street
New York, N. Y.

In re: Holiday Inn of Arlington

Dear Mr. Leibler:

Your letter of June 6, 1960, submitting an offer for the leasing of the Holiday Inn of Arlington on behalf of Mr. Norman Shapiro which letter was addressed to Mr. Frank Perper on behalf of the owners of the Holiday Inn of Arlington, has been referred to me for reply. I wish to advise you that your offer is herewith accepted in accordance with our previous telephone conversations. The acceptance, as you have been advised, is subject to the following conditions:

(1) That in the event the owners of Holiday Inn of Arlington have not obtained a firm commitment for permanent financing of at least 54 additional rooms in an amount of not less than \$5,000 per room by July 15, 1960, the owners shall have the option to withdraw from the lease agreement and to terminate the deal, in which event the deposit shall be returned to you or the tenant.

In the event the owners shall not have obtained a commitment by July 15, 1960, they shall have the right to continue with the lease, it being understood, however, that the owners shall have the right at any time thereafter to construct 54 to 63 additional rooms for which they shall be entitled to additional security in the amount of \$1,250.00 per room for each additional room and additional rent in the amount of \$1,275.00 per room per year. Tenant shall in no way interfere with the construction of said additional rooms.

(2) The amount of the rental shall be \$1,275.00 per room instead of \$1,250.00 per room.

(3) Owners agree to pay to the tenant as interest on the security money the sum of 2% per annum.

(4) The sign on the premises shall be delivered at time of possession it being understood, however, that the face of the sign and the mechanical parts thereof are not the property of the owners, but are under agreement of lease with the Holiday Inns of America.

(5) A lease agreement satisfactory to the attorneys for the owners and the tenant to be executed on or before July 1, 1960.

(6) Financial statements of the principal stockholders of the corporation to be formed to be furnished to Mr. Robert Weiss for use in connection with obtaining additional financing as per above. These statements to be furnished on or before Friday, June 25, 1960.

In view of the fact that the foregoing conditions are in modification of your letter of offer, although said conditions have been discussed with you on the telephone and approved by you as well as your principal and his attorney, the acceptance of this letter is necessary. I, therefore, request that on the original of this letter your client affix his acceptance of the foregoing which, together with your letter of June 6, 1960, will constitute the understanding of the parties. Please return this

original copy duly accepted to this office. The deposit check of \$5,000 dated June 6, 1960, will be held pending negotiation of the lease agreement.

With respect to the real estate commission, it is my understanding that this has been satisfactorily agreed upon between Mr. Stephen Brener of your office, and Mr. Weiss, both in amount and in method of payment. I would appreciate a confirmation by you of your understanding with respect to the commission which in amount is the same as was paid on the Durham Holiday Inn lease and said commission to be paid over a period of five years.

Immediate acceptance of this letter is requested.

Very truly yours,

BM:jw

BERNARD MARGOLIUS

cc: Milton Berger, Esq.
217 Broadway
New York, N. Y.

[Filed March 25, 1966]

DEFENDANT'S EXHIBIT 28

BERNARD MARGOLIUS
Suite 309 Wire Building
1000 Vermont Avenue, N.W.
Washington 5, D. C.

January 20, 1960

To all partners in
Holiday Inn of Arlington

Enclosed herewith you will find a photostatic copy of the Joint Venture Agreement which has been prepared

by this office. The original of this agreement and the certificate of partnership must be signed by each joint venturer before a notary public. After reading the enclosed copy, we would appreciate it if you would arrange to stop by our office any day between 9:00 and 5:30 and sign this agreement before my secretary who is a notary public. When the agreement is completely executed, we will have photostated the signature pages and mail them to you for attachment to the enclosed copy.

This agreement has been gone over by a number of the joint venturers and we have attempted to embody in it all of the suggested changes requested. This agreement was also submitted to tax counsel for an opinion as to the possibility of the joint venture being taxed as a corporation and also with respect to the possibility of the capital being considered ordinary income and have received an opinion which indicates that this agreement will not be considered a corporation nor will any of the capital be considered ordinary income.

The construction of the motel is progressing satisfactorily and as you have already been informed, we have obtained a construction loan in the sum of \$500,000.00 from the Security Bank and Riggs Bank. Inasmuch as the bank will require a copy of the executed agreement prior to allowing us to make our first draw on the construction loan, it is requested that you arrange for the signing of this agreement in our office on or before January 28th.

Sincerely yours,

BERNARD MARGOLIUS

/s/ Ralph H. Deckelbaum

DEFENDANT'S EXHIBIT 64

Copy of Deed of Trust, from Book 11611, Page 315
THIS DEED OF TRUST, Made this the 24th day of

May in the year one thousand nine hundred and sixty-one, by and between Frank M. Perper and wife, Henriette Sahn Perper, and Julian Savage and wife, Nancy Savage, and Sol C. Snider and wife, Lillian Snider, parties of the first part, and Charles A. Gambrill and wife, Dorothy R. Gambrill, and H. Max Ammerman and Charles A. Gambrill, Trustees under a Trust Agreement dated April 4, 1961, for the benefit of John Matthew Gambrill, Monica Clair Gambrill, et al., and 725 Michigan Ave., N.E., Inc., a District of Columbia corporation, acting herein pursuant to a resolution of its Board of Directors, and The Society of the Divine Savior, a Wisconsin corporation, acting herein pursuant to a resolution of its Board of Directors, parties of the second part, and National Savings and Trust Company, Trustee, party of the third part.

WHEREAS, the said parties of the first part stand justly indebted unto American Security and Trust Company in the full principal sum of Nine Hundred Fifty Thousand and no/100 (\$950,000.00) Dollars, being money loaned on the hereinafter described property for which amount the said parties of the first part have executed and delivered their one (1) certain joint and several promissory note bearing even date with these presents, and bearing interest thereon at the rate of six per centum (6%) per annum until paid.

Said principal and interest being payable as follows:

Interest only being payable monthly for the first twelve (12) months commencing on the 1st day of July, 1961, and continuing on the 1st day of each and every month thereafter until the 1st day of June, 1962, thereafter said principal and interest being payable in monthly installments of Eight Thousand Eighteen and no/100 (\$8,018.00) Dollars commencing on the 1st day of July, 1962, and continuing on the 1st day of each and every month thereafter with unpaid balance of principal and interest being due and payable in full sixteen (16) years

after date. Each installment when so paid to be applied first to the payment of interest on the amount of principal remaining unpaid and the balance thereof credited to the principal.

The privilege is reserved to the parties of the first part of prepaying said note as follows: No prepayment privilege during the first five (5) years after date hereof; in the event said note is paid in full during the second five (5) years after date, a prepayment penalty of 3% of the original face amount of the note shall be charged; thereafter said note may be prepaid in part or in whole at any time without penalty.

It is understood and agreed that if default be made in the payment of any one of the aforesaid instalments when and as the same shall become due and payable, then and in that event the unpaid balance of said principal sum shall at the option of the holder thereof at once become due and payable, except as hereinafter provided.

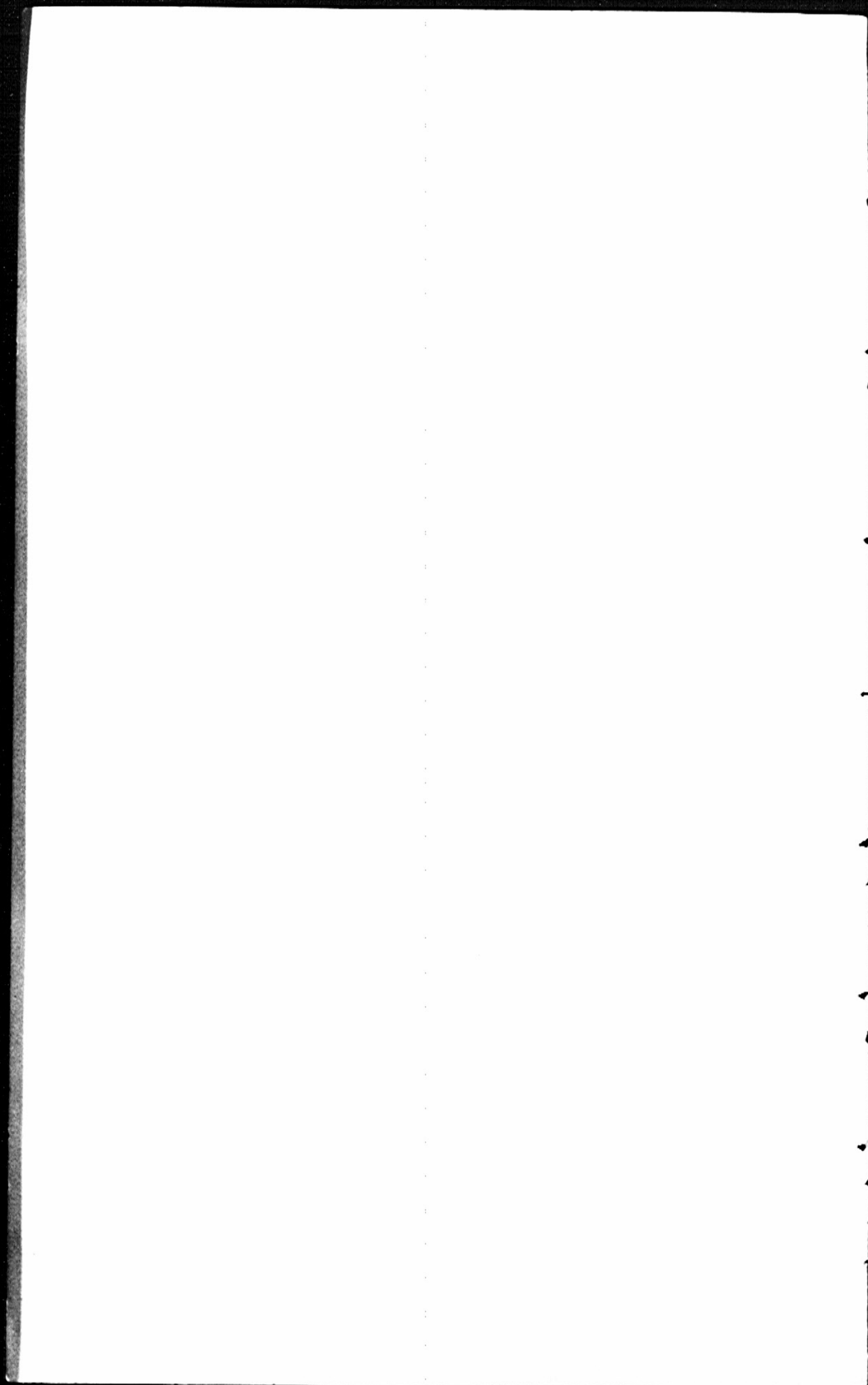
Said monthly instalments being payable at the office of American Security Corporation, 734 - 15th Street, N.W., Washington 5, D. C.

Said note has been identified by a Notary Public taking the acknowledgment to these presents as witness his notation and seal on the same and by Realty Title Insurance Company, Inc., as evidenced by its certification thereon.

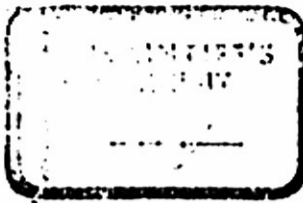
It is understood and agreed that not later than December 31st of each year after date, there will be submitted to American Security Corporation, as Agent for the American Security and Trust Company, or any subsequent noteholder, financial statements covering the operation of the Motor Hotel. Such statements to be certified by a certified public accountant.

It is further understood and agreed that in addition to the aforesaid monthly instalments of principal and interest, the parties of the first part shall pay one-twelfth

of the annual taxes and hazard insurance in monthly instalments sufficient to accumulate the annual requirements one (1) month prior to the due date.



PLAINTIFF'S EXHIBIT 7 (First Page)



FILED

MAR 20 1953

JOINT VENTURE AGREEMENT

THIS AGREEMENT made and entered into this 19th day of Oct.

1953, and between EDWARD KANGOLIN, MA...

ARTHUR L. COHEN, MONTE ROSENBERG, ROBERT A. COHEN, JOSEPH

KIPNIS, LOU... LURIA, EDWIN A. COHEN, ... HIGGINS,

LEO MILWIT, ... PERPER, MRS. SARA, JULIA...

BERNARD URSOLIO, JACOB H. BRODIE, ROBERT L. COHEN,

MORRIS D. STOLAR, and NORMAN FINKELSTEIN,

WITNESSES:

The parties hereto...

and as described in a deed dated the ... 1953,

and as shown in the land-records of ... County, Vir-

ginia, ... Folio ... and as shown in the green cer-

tain ... and improvements to ... at ... hotel

... and ...

... property has ... of ...

... B. Weiss, and ...

... from the Holiday Inn ...

... of the parties hereto and ...

... the parties desire and intend, to ...

... in writing the terms and conditions of the joint

... entered into by them for the purpose of acquiring and owning

... property and constructing the buildings and ...

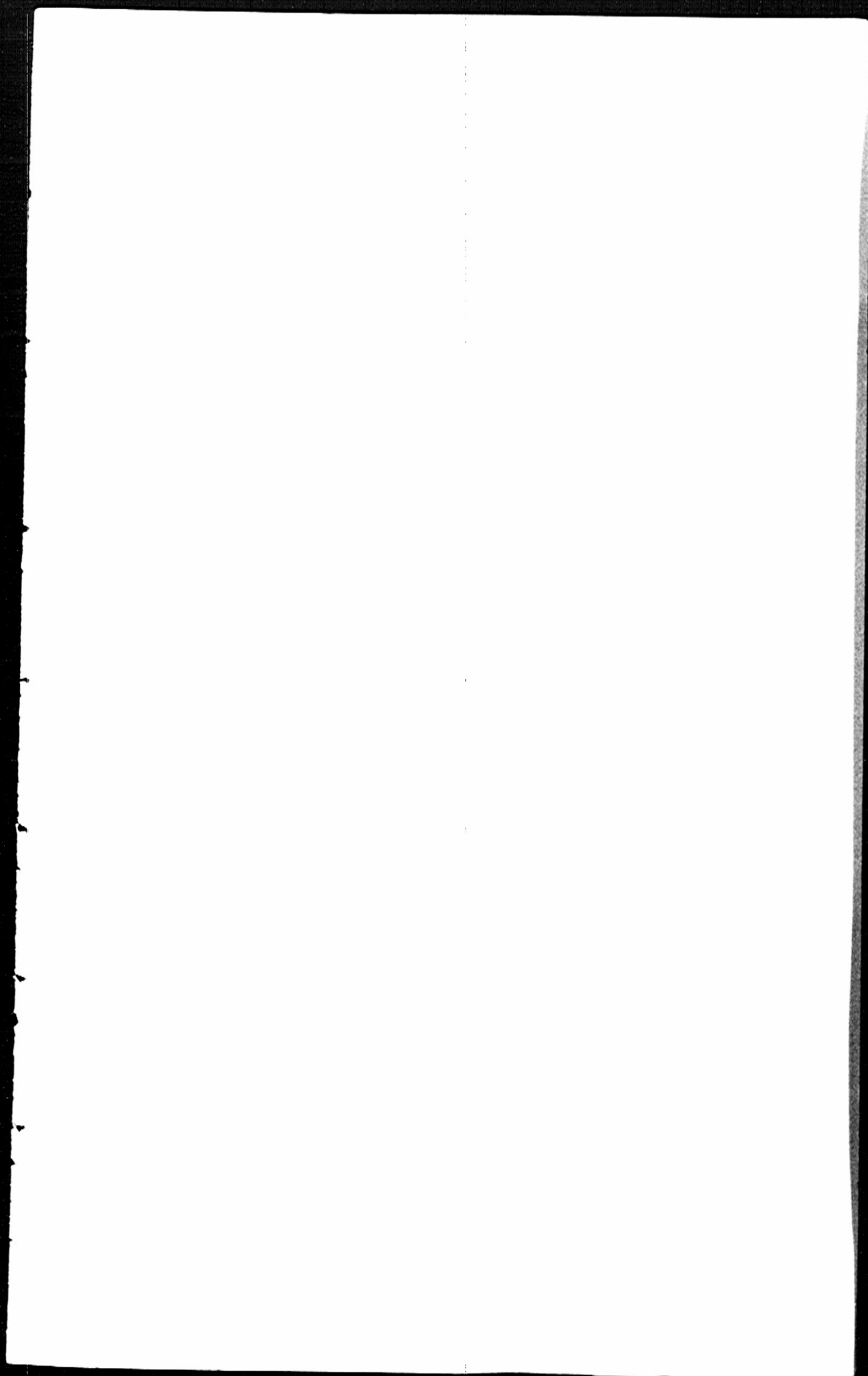
... and the operation of the hotel after its completion and to be

... forth the interest of each of the parties in said ... and the

... distribution of the profits and the sharing of ... which

... may be realized or suffered as a result of the ...

... NOW, THEREFORE, IT IS AGREED:



DEFENDANT'S EXHIBIT 7

DRAFT

JOINT VENTURE AGREEMENT

THIS AGREEMENT made and entered into this _____ day of _____, 1959, by and between EDWARD MARGOLIN, MARY DECKELBAUM, ARTHUR S. GOOZH, MONTE ROSENHEIM, ROBERT STOLAR, JOSEPH KIBNIS, LOUIS E. LURIA, EDWIN A. COHEN, TEMPORIS OR SCHOENBERG, LEO MILWIT, FRANK M. PERPER, ALAN SAHM, JULIAN SAVAGE, BERNARD MARGOLIUS, JACOB M. BROIDIE, ROBERT B. WEISS, MORRIS D. STOLAR, and NORMAN FINKLESTEIN,

WITNESSETH:

WHEREAS, the parties hereto have purchased certain property located in Arlington, Virginia, said property being more particularly described in a deed dated the _____ day of _____, 1959, and duly recorded in the land records for Arlington County, Virginia, in Liber _____, Folio _____, and are erecting thereon certain buildings and improvements to be used and operated as a motel and restaurant, and

WHEREAS, said property has been taken in the names of Jacob M. Broidie and Robert B. Weiss, and Frank M. Perper has obtained a franchise for said motel from the Holiday Inns of America, all on behalf of the parties hereto and

WHEREAS, the parties desire and intend, by this Agreement, to set forth in writing the terms and conditions of the joint venture entered into by them for the purpose of acquiring and owning said property and constructing the buildings and improvements, and the operation of the motel after its completion, and to set forth the interest of each of the parties in said venture and

the distribution of the profits and the sharing of the losses which may be realized or suffered as a result of the venture,

NOW, THEREFORE, IT IS AGREED:

[Filed March 28, 1966]

DEFENDANT'S EXHIBIT 51

BERNARD MARGOLIUS
Suite 309 Wire Building
1000 Vermont Avenue, N.W.
Washington 5, D. C.

November 2, 1960

Mr. Jack Ladd
3736 Lamar Avenue
Memphis 18, Tennessee

Dear Jack:

In accordance with your request, I am enclosing herewith the original franchise for the Holiday Inn located at Glebe Road and Shirley Highway in Arlington, Virginia, so that you may add the names of Harold Perper and Edwin Cohen. I would appreciate it, after it has been amended or reprepared, if you will return it to me and I will have it properly executed by the licensees.

Sincerely yours,

BERNARD MARGOLIUS

/s/ Ralph H. Deckelbaum

[Filed March 28, 1966]

DEFENDANT'S EXHIBIT 52

April 25, 1961

Mr. Ralph Deckelbaum
Suite 309 Wire Building
1000 Vermont Avenue, N.W.
Washington 5, D. C.

Dear Mr. Deckelbaum:

Enclosed are two copies of the franchise license agreement for the Holiday Inn of Arlington, Virginia, which we have rewritten in the name of Frank Perper, Harold Perper and Edwin Cohen. The original license agreement was in the name of Frank Perper only. Please have these two copies of the license agreement signed by all three individuals and then return the two copies to us to be executed by our officers. We shall then return the original executed copy for your files.

Sincerely,

**HOLIDAY INNS OF
AMERICA, INC.**

Charles M. Collins
Vice President and
General Counsel

[Filed March 28, 1966]

DEFENDANT'S EXHIBIT 53

April 26, 1961

Mr. Ralph Deckelbaum
Suite 309 Wire Building
1000 Vermont Avenue, N.W.
Washington 5, D. C.

Dear Mr. Deckelbaum:

Enclosed are two copies of the Great Sign lease for the Holiday Inn of Arlington, Virginia, which we have rewritten in the name of Frank Perper, Harold Perper and Edwin Cohen. The original Great Sign lease was in the name of Frank Perper only. Please have these two copies of the lease signed by all three individuals and then return the two copies to us to be executed by our officers. We shall then return the original executed copy for your files.

Kindest personal regards.

Yours very truly,

HOLIDAY INNS OF
AMERICA, INC.

Carl E. Webb
Associate General Counsel

[Filed March 28, 1966]

DEFENDANT'S EXHIBIT 54

May 24, 1961

Mr. Ralph Deckelbaum
Suite 309 Wire Building
1000 Vermont Avenue, N.W.
Washington 5, D. C.

Dear Mr. Deckelbaum:

On April 25 we mailed to you two copies of the Franchise License Agreement for the Holiday Inn of Arlington, Virginia, which had been redrawn in the names of Frank Perper, Harold Perper and Edwin Cohen. In checking our files we find that we have not received these two copies back. Will you please check into this matter for us so that the License can be properly executed in this office. Thank you for your prompt attention to this.

Sincerely,

HOLIDAY INNS OF
AMERICA, INC.

Charles M. Collins
Vice President and
General Counsel

[Filed March 28, 1966]

DEFENDANT'S EXHIBIT 57

August 21, 1961

Mr. Ralph Deckelbaum
Suite 309 Wire Building
1000 Vermont Avenue, N.W.
Washington 5, D. C.

Dear Mr. Deckelbaum:

Several months ago, Mr. Charles Collins corresponded with you concerning the changing of the License Agreement for the Holiday Inn of Arlington, Virginia. The franchise was being redrawn in the names of Frank Perper, Harold Perper, and Edwin Cohen. In checking in our files, we find that we have not received these copies back for our execution. I would appreciate it if you would check into this matter and forward it to us so that we can clear this matter up immediately.

Sincerely yours,

**HOLIDAY INNS OF
AMERICA, INC.**

Jeff Mann,
Assistant Vice President
Franchise Sales Department

cc: Mr. Julian Savage

DEFENDANT'S EXHIBIT 2

September 23, 1959

Mr. Bernard Margolius
Suite 309
1000 Vermont Avenue, N.W.
Washington 5, D. C.

Dear Mr. Margolius:

Several days ago our Construction Department received some preliminary plans for a Holiday Inn in Arlington, Virginia.

There seems to be some discrepancy in this franchise as to the exact location of this particular Inn and who the principles of the corporation are.

I suggest that you drop us a line giving us the exact address of this Arlington, Virginia Holiday Inn, and possibly enclose a city map of that region indicating the location.

We would also be desirous of all the principles involved in this corporation so that our Legal Department can correct the license agreement and any discrepancy that exists.

We would appreciate hearing from you by return mail.

Very truly yours,

HOLIDAY INNS
OF AMERICA, INC.

Jeff Mann
Franchise Sales Department

cc: Construction Dept.

[Filed March 25, 1966]

DEFENDANT'S EXHIBIT 25

CERTIFICATE OF PARTNERSHIP

The undersigned do hereby certify that they are a partnership conducting business in Arlington County, State of Virginia, and do hereby execute and file this certificate pursuant to Section 50-74 of the Code of Virginia under the following conditions:

1. The name of the partnership is Shirley-Glebe Motel.

2. The character of the business is and shall be that of owning, leasing and operating a motel, restaurant and other buildings and improvements associated therewith.

3. The location of the principal place of business is Shirley Highway and Glebe Road, Arlington County, Virginia.

4. The partnership shall continue until the purposes for which it has been created have been accomplished. The death or retirement of any partner shall dissolve the partnership.

5. The name and respective address of each member of the partnership are as follows:

Emanuel Baskin, 4000 Massachusetts Avenue, N.W.,
Washington, D. C.;

Joseph Beyda, 1034 Connecticut Avenue, N.W., Wash-
ington, D. C.;

Jacob M. Broidie, 5000 Bates Road, N.E., Washington,
D. C.;

Mary Deckelbaum, 4700 - 5th Street, N.W., Washington,
D. C.;

Ralph H. Deckelbaum, 1000 Vermont Avenue, N.W.,
Washington, D. C.;

- Sylvan Diatz, 1707 Donald Place, Silver Spring, Maryland;
- Norman Finklestein, 927 - 15th Street, N.W., Washington, D. C.;
- Alvin Friedman, 7832 - 16th Street, N.W., Washington, D. C.;
- Martin Goldberg, 1817 Tulip Street, N.W., Washington, D. C.;
- Joseph Goozh, 2816 Military Road, N.W., Washington, D. C.;
- Arthur S. Goozh, 613 - 14th Street, N.W., Washington, D. C.;
- Gerald B. Greenwald, 839 - 17th Street, N.W., Washington, D. C.;
- Jack Kaplan, 1006 Roswell Drive, Silver Spring, Maryland;
- Harry Katz, 1336 Jonquil Street, N.W., Washington, D.C.;
- George Kimelblatt, 4000 Massachusetts Avenue, N.W., Washington, D. C.;
- Joseph Kipnis, 2207 Rhode Island Avenue, N.E., Washington, D. C.;
- Louis E. Luria, 2800 Woodley Road, N.W., Washington, D. C.;
- Edward Margolin, 8500 Freyman Drive, Chevy Chase, Maryland;
- Bernard Margolius, 1000 Vermont Avenue, N.W., Washington, D. C.;
- Leo Milwit, 1317 E Street, N.W., Washington, D. C.;
- Frederick H. Pelzman, 3503 Rodman Street, N.W., Washington, D. C.;
- Harold Perper, 19001 N.E. 18th Avenue, North Miami Beach, Florida;
- Monte Rosenheim, 1327-1/2 G Street, N.W., Washington, D. C.;
- Alan Sahm, 5319 Wisconsin Avenue, N.W., Washington, D. C.;
- Julian Savage, 815 - 15th Street, N.W., Washington, D.C.;
- Ruth Schoenberg, 6101 - 16th Street, N.W., Washington, D. C.;

Morris D. Stolar, 1415 K Street, N.W., Washington, D.C.;
 Robert Stolar, 1801 Eye Street, N.W., Washington, D.C.;
 Robert B. Weiss, 1415 K Street, N.W., Washington, D.C.;
 4G Investment Company, 1766 Verbena Street, N.W.,
 Washington, D. C.

/s/ Emanuel Baskin	/s/ Joseph Beyda
/s/ Jacob M. Broidie	/s/ Mary Deckelbaum
/s/ Ralph H. Deckelbaum	/s/ Sylvan Diatz
/s/ Norman Finklestein	/s/ Alvin Friedman
/s/ Martin Goldberg	/s/ Arthur S. Goozh
/s/ Gerald B. Greenwald	/s/ Jack Kaplan
/s/ Harry Katz	/s/ George Kimelblatt
/s/ Joseph Kipnis	/s/ Louis E. Luria
/s/ Edward Margolin	/s/ Bernard Margolius
/s/ Leo Milwit	/s/ Frederick H. Pelzman
/s/ Harold Perper	/s/ Monte Rosenheim
/s/ Alan Sahm	/s/ Julian Savage
/s/ Ruth Schoenberg	/s/ Morris D. Stolar
/s/ Robert Stolar	/s/ Robert B. Weiss
4G Investment Co.	/s/ Joseph Goozh
by /s/ Edwin A. Cohen	

[Filed March 25, 1966]

PLAINTIFF'S EXHIBIT 10

JOINT VENTURE AGREEMENT

THIS AGREEMENT, made and entered into as of the 29th day of October, 1959, by and between EMANUEL BASKIN, JOSEPH BEYDA, JACOB M. BROIDIE, MARY DECKELBAUM, RALPH H. DECKELBAUM, SYLVAN DIATZ, NORMAN FINKLESTEIN, ALVIN FRIEDMAN, MARTIN GOLDBERG, ARTHUR S. GOOZH, JOSEPH GOOZH, GERALD B. GREENWALD, JACK KAPLAN, HARRY KATZ, GEORGE KIMELBLATT, JOSEPH KIPNIS, LOUIS E. LURIA, EDWARD MARGOLIN, BERNARD

MARGOLIUS, LEO MILWIT, FREDERICK H. PELZMAN, HAROLD PERPER, MONTE ROSENHEIM, ALAN SAHM, JULIAN SAVAGE, RUTH SCHOENBERG, MORRIS D. STOLAR, ROBERT STOLAR, ROBERT B. WEISS and 4G INVESTMENT COMPANY,

WITNESSETH:

WHEREAS, the parties hereto have purchased certain property located in Arlington, Virginia, viz:

All that tract of land located in Arlington County, Virginia, known as the Stoneburner Property per plat dated 8-6-59, by D. E. Whiting, C. S., and more particularly described as follows:

Beginning at the SE intersectional corner of South Glebe Road and 24th Road South; thence, along 24th Road South, N38-04-55 E 87.67 feet; thence, N58-40-20 E 283.44 feet; thence, leaving said Road, S 24-06-26 E 379 feet; thence, S 65-56-26 W 131.35 feet; thence, S48-29-07 W 121.95 feet; thence, S67-22-30 W 60.13 feet to the east line of South Glebe Road; thence, along South Glebe Road, N29-20- W 50.30 feet; thence, on a curve to the left on a radius of 2118.48 feet an arc distance 291.18 feet to the point of beginning, containing 2.81356 acres, more or less.

and propose to erect thereon certain buildings and improvements to be used and operated as a motel, restaurant and related facilities, and

WHEREAS, title to said property has been taken in the names of Jacob M. Broidie and Robert B. Weiss, trustees, and the said Jacob M. Broidie and Robert B. Weiss have executed certain mortgages and/or deeds of trust and trust notes; and Harold Perper has obtained a franchise for a motel from Holiday Inns of America, all on behalf of the parties hereto; and

WHEREAS, the parties desire and intend, by this agreement, to set forth in writing the terms and condi-

tions of the joint venture entered into by them for the purpose of acquiring and owning said property and constructing the buildings and improvements, and the operation and leasing of the motel after its completion, and to set forth the interest of each of the parties in said venture and the distribution of the profits and the sharing of the losses which may be realized or suffered as a result of the venture,

NOW, THEREFORE, IT IS AGREED:

1. That the parties hereto are engaged in and shall continue to be engaged in a joint venture for the purpose of owning the property aforesaid for the purpose of erecting or causing to be erected buildings and improvements upon said property, and of furnishing the same, after completion, of operating said buildings and improvements as a Holiday Inn Motel, or under such other name as may from time to time be agreed upon, or leasing said motel, and this joint venture shall be, and it is hereby limited and restricted solely to the business purposes herein contained.

2. It is agreed that the deed to the property has been executed and recorded in the names of Jacob M. Broidie and Robert B. Weiss, as trustees, and in accordance with the understanding of the parties hereto the said Jacob M. Broidie and Robert B. Weiss hereby acknowledge that they hold said property, together with all buildings and improvements, furniture, furnishings and equipment, erected or to be erected, or installed in or upon said property, for the benefit of all the parties to this agreement, to the same extent as though the parties to this agreement were the named owners of record, and the parties hereto own all the assets of the joint venture, including the land, buildings, improvements, furniture, fixtures, equipment, franchises, etc., as tenants in common in the respective amounts equal to their original capital; plus subsequent contributions to capital,

less withdrawals, increased by the profits, or decreased by the losses credited or charged to their respective capital accounts in the ratio set forth in the following paragraph.

2(a). Emanuel Baskin	2-1/2%
Joseph Beyda	1-1/4%
Jacob M. Broidie	5%
Mary Deckelbaum	5%
Ralph H. Deckelbaum	2%
Sylvan Diatz	1-1/4%
Norman Finklestein	7%
Alvin Friedman	.625%
Martin Goldberg	1-1/4%
Arthur S. Goozh	1-2/3%
Joseph Goozh	1-2/3%
Gerald B. Greenwald	1-1/4%
Jack Kaplan	.625%
Harry Katz	2-1/2%
George Kimelblatt	1-2/3%
Joseph Kipnis	2-1/2%
Louis E. Luria	2-1/2%
Edward Margolin	1-1/4%
Bernard Margolius	8%
Leo Milwit	5%
Frederick H. Pelzman	1-1/4%
Harold Perper	5%
Monte Rosenheim	5%
Alan Sahn	5%
Julian Savage	5%
Ruth Schoenberg	1-1/4%
Morris D. Stolar	2-1/2%
Robert Stolar	5%
Robert B. Weiss	10-1/2%
4g Investment Company	5%

2(b). Upon dissolution of the joint venture, each joint venturer shall have his capital account returned plus or minus his share of the profits or losses, which

profits or losses shall be apportioned in accordance with the percent of interest set forth in paragraph 2(a) unless otherwise provided hereafter.

3. It is understood and agreed that the capital of the joint venture shall be contributed as follows: Each of the following joint venturers, Emanuel Baskin, Joseph Beyda, Mary Deckelbaum, Sylvan Diatz, Alvin Friedman Martin Goldberg, Arthur S. Goozh, Joseph Goozh, Gerald B. Greenwald, Jack Kaplan, Harry Katz, George Kimelblatt, Joseph Kipnis, Louis E. Luria, Edward Margolin, Leo Milwit, Frederick H. Pelzman, Monte Rosenheim, Ruth Schoenberg, Robert Stolar and 4G Investment Company, shall contribute the sum of Two Hundred Thousand (\$200,000.00) Dollars, proportionately, as his interest may bear to said Two Hundred Thousand (\$200,000.00) Dollars. In addition, the remaining venturers, Jacob M. Broidie, Ralph H. Deckelbaum, Norman Finklestein, Bernard Margolius, Harold Perper, Alan Sahm, Julian Savage, Morris D. Stolar and Robert B. Weiss, shall contribute, if required, the sum not to exceed One Hundred Thousand (\$100,000.00) Dollars, proportionately, as his interest may bear to said One Hundred Thousand (\$100,000.00) Dollars. It is further understood and agreed that any additional monies required to complete the motel over and above Three Hundred Thousand (\$300,000.00) Dollars contributed as initial capital and the trusts or mortgages obtained, including, but not limited to, the existing trust which shall become a second trust, and the permanent trust or mortgage and any additional trusts or mortgages placed against said property, shall be contributed as follows: One-third of such additional capital required shall be contributed by Jacob M. Broidie, Ralph H. Deckelbaum, Norman Finklestein, Bernard Margolius, Harold Perper, Alan Sahm, Julian Savage, Morris D. Stolar and Robert B. Weiss, proportionately, as his interest may bear to said amount, and two-thirds by the remaining

joint venturers proportionately, as their interest may bear to such amount.

4. It is understood and agreed that the notes in the total amount of Two Hundred Seventy-six Thousand (\$276,000.00) Dollars and the trust on the property securing said notes, executed by the said Jacob M. Broidie and Robert B. Weiss, constitutes an obligation of the joint venture. The said Jacob M. Broidie and Robert B. Weiss are further authorized to execute the notes for construction and permanent financing of said motel together with trusts securing said obligations and to enter into a construction contract for the construction of the motel, all on behalf of the joint venture. Said loans and obligations are to be repaid out of the income and assets of the joint venture as the same shall become due and payable. Any losses sustained by reason of default or non-payment of said loans or obligations by any of the joint venturers in whose name the obligations were made, on behalf of the joint venture, over and above the amount for which said named parties would be otherwise liable, shall be reimbursed proportionately by all the other joint venturers forthwith, it being understood that said notes and obligations are a primary obligation of the joint venture to be paid by all the joint venturers.

5. All profits of the joint venture, if any, are to be divided between them in accordance with their interest, as set forth in paragraph 2(a), and all losses thereof of every kind shall be shared or borne by the joint venturers in the same proportion except as otherwise hereinafter provided. Each of the joint venturers shall have a capital account which shall consist of the amount of capital contributed by him as increased by his pro rata share of all undistributed profits of the joint venture and as decreased by his pro rata share of all withdrawals from his capital account and losses incurred. If the interest of a joint venturer is disposed of to other joint venturers in accordance with paragraph 14 hereof, the

capital account of the retiring joint venturer shall be allocated pro rata to the joint venturers acquiring his share.

6. The joint venture shall continue until the purposes for which it has been created shall have been accomplished. The death or retirement of any joint venturer shall dissolve the joint venture as to the others except as hereinafter provided.

7. It is expressly understood and agreed by and between the joint venturers that all decisions affecting the sale, lease, operation and management of the property and affairs of the joint venture shall be made by the affirmative vote of the majority in interest of the joint venture and all such decisions shall be binding upon all of the parties to this agreement. Full and accurate accounts of the transactions of the joint venture shall be kept in proper books, and each party shall cause to be entered in said books a full and accurate account of all of his transactions in behalf of the venture. The books of the joint venture shall be kept either at the place of business of the joint venture, or at the office of the Accountant auditing said books, and each party shall, at all reasonable times, have access to said books for inspection. At the end of each year of the joint venture, the Accountant shall prepare a statement showing profits, assets and liabilities, and the gross and net income of the joint venture shall be ascertained and net profits and net losses shall be fixed and determined. The amount so fixed shall be divided proportionately by the parties hereto in proportion to their interest in the joint venture as hereinabove provided. The joint venture shall make monthly distributions to the joint venturers, if the cash position of the joint venture warrants a distribution.

8. A bank account or accounts shall be opened and maintained on behalf of the parties of this agreement

and such account or accounts shall be owned by the parties to this agreement as tenants in common. The persons entitled to draw on said account or accounts shall be decided by the majority in interest of the joint venture.

9. No joint venturer shall, without the consent of the majority in interest of the joint venture, assign, mortgage or charge his share in the assets or profits of the business of the joint venture or any part of such share, draw, accept or endorse any bill of exchange, or promissory note, on account of the joint venture, or lend any of the monies of the joint venture to any person or persons nor shall he incur any obligation on behalf of the joint venture except in the usual course of business. Each joint venturer shall forthwith pay all monies, checks and negotiable instruments received by him on account of the joint venture to the joint venture account, shall be just and faithful to the others, and at all times give to each other full information and truthful explanation of all matters relating to the affairs of the joint venture. No joint venturer shall, during the existence of the joint venture, use the trade or business of the joint venture for his private benefit or advantage, but shall at all times do his best by all lawful means, to the utmost of his skill and power, for the joint interest, profit, benefit, and advantages of the joint venture. Each joint venturer shall promptly pay and discharge his separate and private debts and obligations and indemnify the joint venture from and against all actions, proceedings, costs, claims and demands in respect thereof.

10. If any joint venturer shall take advantage of any bankruptcy or insolvency act, or if he shall be adjudicated a bankrupt, or if an insolvency petition shall be filed against him, and a final adjudication of insolvency entered thereon, or if any partner shall make an assignment for the benefit of his creditors, then within 60 days

after any such adjudication or assignment, the other joint venturers shall have the absolute option and right to purchase such venturer's interest in the joint venture at a price equal to his capital account, increased by his share of undistributed profits, and reduced by his share of losses, to the extent not already reflected in his capital account, for the year in which the adjudication or assignment is made.

11. It is understood and agreed that in the event it shall be determined by the majority of the parties in interest hereto that additional capital shall be needed by reason of the motel being enlarged and additional rooms constructed, then additional capital required for said enlargement or expansion shall be contributed by the joint venturers as follows: Jacob M. Broidie, Ralph H. Deckelbaum, Norman Finklestein, Bernard Margolius, Harold Perper, Alan Sahm, Julian Savage, Morris D. Stolar and Robert B. Weiss shall contribute one-third of the additional capital required, proportionately to their interest, and the remaining joint venturers shall contribute two-thirds of the additional capital required, proportionately to their interest. In the event any party hereto shall fail when called upon to contribute his share of any such additional capital within a period of time set by the majority, but not less than 15 days, then the amount of capital to be contributed by said party may be contributed by the remaining venturers pro rata, or by so many of them as shall agree to do so, after 10 days notice in writing given to each. In that event, the interest in the joint venture of the party failing to contribute shall be reduced in proportion to which the amount required to be contributed bears to the evaluation of said party's interest as herein fixed, and as a result the interest of those parties contributing the required capital shall have their interest in the joint venture increased pro rata. Should none of the joint venturers agree to contribute the capital required of a defaulting venturer,

at the end of the 10 day notice period above provided for, then, and in that event, the interest of such defaulting party shall terminate and the amount theretofore contributed by him to the capital of the joint venture, plus his share of any undistributed profits or minus his share of losses not already paid or deducted, shall be returned to him in three equal annual installments, bearing interest at the rate of 6% on the unpaid balance, the first annual installment to be paid one year from date of termination. In such case, said party shall thereafter be no longer deemed to be a member of the joint venture and shall be entitled to no part or share of any profits thereof, the failure to contribute the required capital being deemed to be a sale to the remaining venturers of said joint venturer's interest.

12. It is understood and agreed that in the event it shall be determined by the majority of the parties in interest hereto that additional capital shall be needed by reason of any operating loss, then additional capital shall be contributed by the joint venturers in accordance with their interest as set forth in paragraph 2(a). In the event any party hereto shall fail when called upon to contribute his share of any such additional capital within a period of time set by the majority, but not less than fifteen (15) days, then the amount of capital to be contributed by said party may be contributed by the remaining venturers pro rata, or by so many of them as shall agree to do so, after 10 days notice in writing given to each. In that event, the interest in the joint venture of the party failing to contribute shall be reduced in proportion to which the amount required to be contributed bears to the evaluation of said party's interest as herein fixed, and as a result the interest of those parties contributing the required capital shall have their interest in the joint venture increased pro rata. Should none of the joint venturers agree to contribute the capital required of a defaulting venturer, at the end of the 10 day

notice period above provided for, then, and in that event, the interest of such defaulting party shall terminate and said defaulting joint venturer shall receive a note bearing interest at the rate of 6% per annum and payable in three equal annual installments, the first of said installments to be paid one year from date of termination and said note shall be in the amount of (1) 75% of the aggregate capital accounts of the joint venture adjusted by any undistributed profits or losses, multiplied by (2) the interest of the defaulting venturer. Said note shall be unsecured and subordinated in right of payment to all creditors of the joint venture. In such case, said party shall thereafter be no longer deemed to be a member of the joint venture and shall be entitled to no part or share of any profits thereof, the failure to contribute the required capital being deemed to be a sale to the remaining venturers of said joint venturer's interest.

13. It is further agreed by the parties hereto that in the event any of the parties shall die prior to the consummation of the objects of the joint venture, the joint venture shall terminate and the surviving parties agree that the heirs or legatees of the deceased party may hold the latter's interest in the same manner and under the same terms and conditions as if said party were living, in a new venture to be formed, but in the event said heirs or legatees shall sell the same, the interest shall be sold upon the same terms as provided in the case of a sale during the lifetime of any party as hereinafter set forth, plus the deceased venturer's share of accumulated profits or less his share of accumulated losses not previously paid or deducted, said profits or losses to be determined as of the last day of the month in which the joint venturer dies. In the event no election is made by the administrator, executor, heirs or legatees of the deceased joint venturer within 30 days after the death of the said joint venturer, then it will be presumed that said heirs or legatees do not desire to form a new joint venture.

14. In the event any party desires to dispose of, transfer or sell his interest in the joint venture, he shall first give notice of such intention by registered or certified mail return receipt requested, addressed to the other joint venturers, which notice shall be considered an offer to sell the said interest, and the other joint venturers shall thereupon have the option and right to purchase the same pro rata within 30 days after receipt of said notice upon the following terms: The price shall be computed in the following manner: The majority in interest of the joint venturers on June 1, 1960, or as soon thereafter as possible, shall establish a price to be paid for a 1% interest in the venture, and said price shall be used to compute the price to be paid the retiring joint venturer for the interest which he may have in said venture, in addition to the amount of his capital account. In the event any joint venturer desires to retire prior to the fixing of the evaluation on June 1, 1960, the price to be paid shall be the amount of his capital account. On June 1 of each year after 1960, or as soon thereafter as possible, the majority in interest of the joint venture shall reconsider and re-evaluate the price. Evaluation as herein provided shall be reduced to writing signed by a majority in interest of the joint venturers and a copy delivered to each of the joint venturers. In the absence of a re-evaluation at any period as herein provided the prior evaluation shall be deemed to be continued in effect, provided, however, that in the event no evaluation has been made for twelve months, then any joint venturer can demand by written notice to the other joint venturers that a re-evaluation be had and a price established for a 1% interest. Should any additional building or buildings be constructed during any one year period, a re-evaluation shall be made within 30 days after completion of the new building or buildings by a majority in interest and shall remain in effect until a re-evaluation is made in June of the following year and each year thereafter. The price as thus com-

puted shall be paid 50% in cash within 60 days following receipt of the written notice to sell. The balance shall be represented by a promissory note of the joint venture bearing interest at the rate of 6% per annum and payable in 3 annual installments. In the event the joint venture shall not exercise the right to purchase the interest of a retiring joint venturer, in accordance with the terms of this paragraph, then such joint venturer's interest may be purchased by so many of the joint venturers desiring to do so, pro rata under the same terms and conditions as herein provided, except that the promissory note shall be signed only by such joint venturers purchasing the same. Said purchase shall be made within forty-five days after the receipt of the original notice of the offer to sell. In the event the joint venture or any of the joint venturers shall not exercise the right to purchase the interest of a retiring joint venturer, in accordance with the terms of this paragraph, then the assets of the joint venture shall be sold and disposed of at the earliest possible time and at the highest price obtainable, and the joint venture shall be terminated, dissolved and liquidated.

15. In the event the majority in interest of the joint venturers shall decide to lease said motel, and as a result of said lease there is obtained a security deposit, said funds shall be distributed to the joint venturers in accordance with their percentage of interest as set forth in paragraph 2(a) hereof, provided, however, the said security deposit shall be an obligation of each joint venturer, or his successor or assign, due and owing to the joint venture in accordance with the terms and conditions with which said security deposit is placed with the joint venture.

16. This agreement may be modified or changed at any time by agreement in writing signed by two-thirds majority in interest of the joint venturers.

17. In the event that the majority in interest of the joint venture shall so desire, Jacob M. Broidie and Robert B. Weiss shall assign and transfer the property by deed, duly executed and acknowledged, to such person or persons as shall be designated by affirmative vote of the majority in interest of the joint venture, subject to any mortgage outstanding or any leasehold on the restaurant or any other part of the building or buildings which may have been executed on behalf of the joint venture, and provided that no action shall be taken by any parties to this agreement to diminish the interest of any other party to this agreement, except as specifically provided in hereinabove.

18. It is understood and agreed that none of the joint venturers shall be paid any salary or receive any compensation, except for expenses, unless agreed to by the majority in interest of the joint venture.

19. This agreement represents the entire understanding between the parties hereto and shall be binding upon the parties hereto, their heirs, executors, administrators and assigns.

20. This joint venture agreement shall be constructed in accordance with the Uniform Partnership Act of the State of Virginia provided, however, that if any of the provisions of this contract are in conflict with said Uniform Partnership Act this agreement shall be controlling.

21. In the event any of the joint venturers dispose of all or a portion of his interest in the joint venture, then the person or persons acquiring said interest shall assume the obligations of the retiring joint venturer in the same relationship as the retiring joint venturer held to the joint venture.

22. Each of the joint venturers hereby designates and appoints Bernard Margolius, of 1000 Vermont Ave-

nue, N.W., as their agent for each of the joint venturers upon whom process in the District of Columbia may be issued by any of the joint venturers against the other joint venturers. The appointment of this agent is for the sole purpose of the service of process of an action between the joint venturers and arising out of this joint venture, and the appointment of this agent is irrevocable unless agreed to by all of the joint venturers.

IN WITNESS WHEREOF, the parties have signed and sealed these presents on the date first above written.

/s/ Emanuel Baskin	/s/ Joseph Beyda
/s/ Jacob M. Broidie	/s/ Mary Deckelbaum
/s/ Ralph H. Deckelbaum	/s/ Sylvan Diatz
/s/ Norman Finklestein	/s/ Alvin Friedman
/s/ Martin Goldberg	/s/ Arthur S. Goozh
/s/ Joseph Goozh	/s/ Gerald B. Greenwald
/s/ Jack Kaplan	/s/ Harry Katz
/s/ George Kimelblatt	/s/ Joseph Kipnis
/s/ Louis E. Luria	/s/ Edward Margolin
/s/ Bernard Margolius	/s/ Leo Milwit
/s/ Frederick H. Pelzman	/s/ Harold Perper
/s/ Monte Rosenheim	/s/ Alan Sahm
/s/ Julian Savage	/s/ Ruth Schoenberg
/s/ Morris D. Stolar	/s/ Robert Stolar
/s/ Robert B. Weiss	4G Investment Company
	by /s/ Edwin A. Cohen

[Filed March 28, 1966]

DEFENDANT'S EXHIBIT 63

HOLIDAY INNS OF AMERICA, INC.
3736 Lamar Ave.
Post Office Box 7127
Memphis 18, Tennessee

License Application for Washington-Baltimore Parkway . . . Route . . . Prince George's County, Md. (see area . . . on map)

Street Address not yet designated

City Bladensburg, Maryland

Population of Franchise Territory * * *

Have you obtained a location for the proposed Holiday Inn? Yes.

Has it been approved? _____ Purchased? Yes, now in for zoning . . .

JOINT VENTURE

If a Partnership x or Corporation list the principals their titles, and addresses.

Norman A. Shapiro, Holiday Inn of Arlington,
Glebe Road, Arlington, Virginia
Norman Finkelstein, 1415 K Street, N.W.,
Washington, D. C.

Robert B. Weiss, 1415 K Street, N.W.,
Washington, D. C.

Charles . . . 6714 R . . . Road, Falls
Church, Virginia

Russel . . . Wine, 7022 Oregon Avenue, N.W.,
Washington, D. C.

Has your organization ever been adjudged bankrupt? No
 . . . operate a HOLIDAY INN in accordance with the
 high standards of HOLIDAY INN reputation and in ac-
 cordance with the rules of operation of HOLIDAY INNS
 OF AMERICA? Yes.

Will you make every effort to promote the National Sys-
 tem of HOLIDAY INNS OF AMERICA? Yes.

How do you plan to finance the proposed HOLIDAY INN?
 . . . above the . . . mortgage . . .

Please attach a map indicating in detail, the boundaries
 of the proposed territory.

The statements contained in this application are war-
 ranted to be full, true and complete and nothing has
 been suppressed affecting my/our credit status. No
 statements or information furnished to any officer,
 agent or representative of HOLIDAY INNS OF AMERICA
 INC. shall be notice, unless the same is contained here-
 in. The . . . and every part hereof is the inducement to
 HOLIDAY INNS OF AMERICA, INC. to grant a license
 for the territory set out herein.

This application must be presented for approval to the
 Board of Directors of HOLIDAY INNS OF AMERICA,
 INC. at its Executive Offices in Memphis, Tennessee.

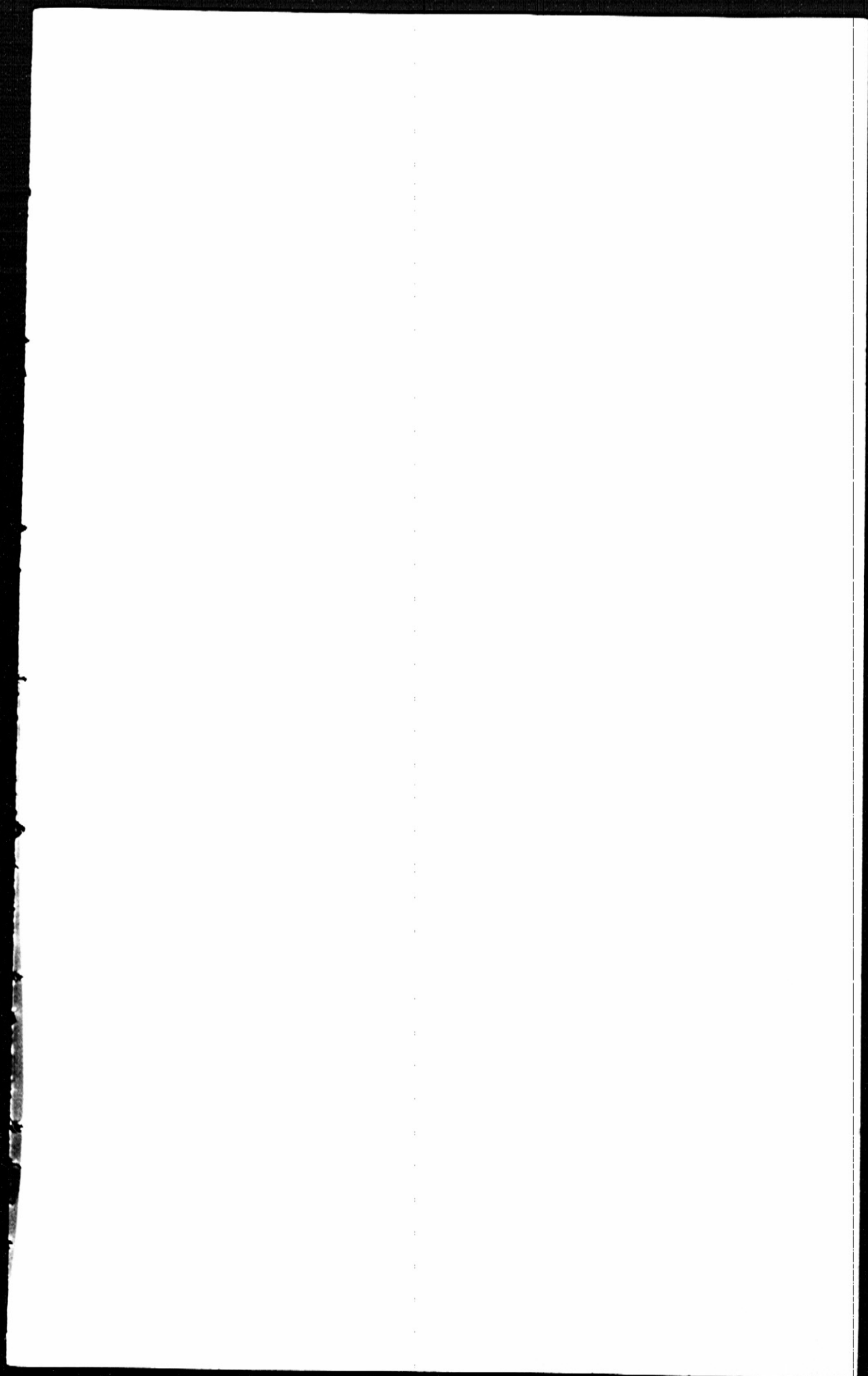
Witnessed

Signed

/s/ Morris D. Stolar

/s/ Norman A. Shapiro

Dated this 3rd Day of July, 1961



BRIEF FOR APPELLANTS

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,073

ROBERT B. WEISS
JACOB M. BROIDIE
NORMAN FINKELSTEIN
and
MORRIS D. STOLAR,

Appellants

v.

FRANK M. PERPER
HENRIETTA PERPER
HAROLD E. PERPER
JULIAN SAVAGE
ALAN SAHM
and
MARTIN PERPER,

Appellees

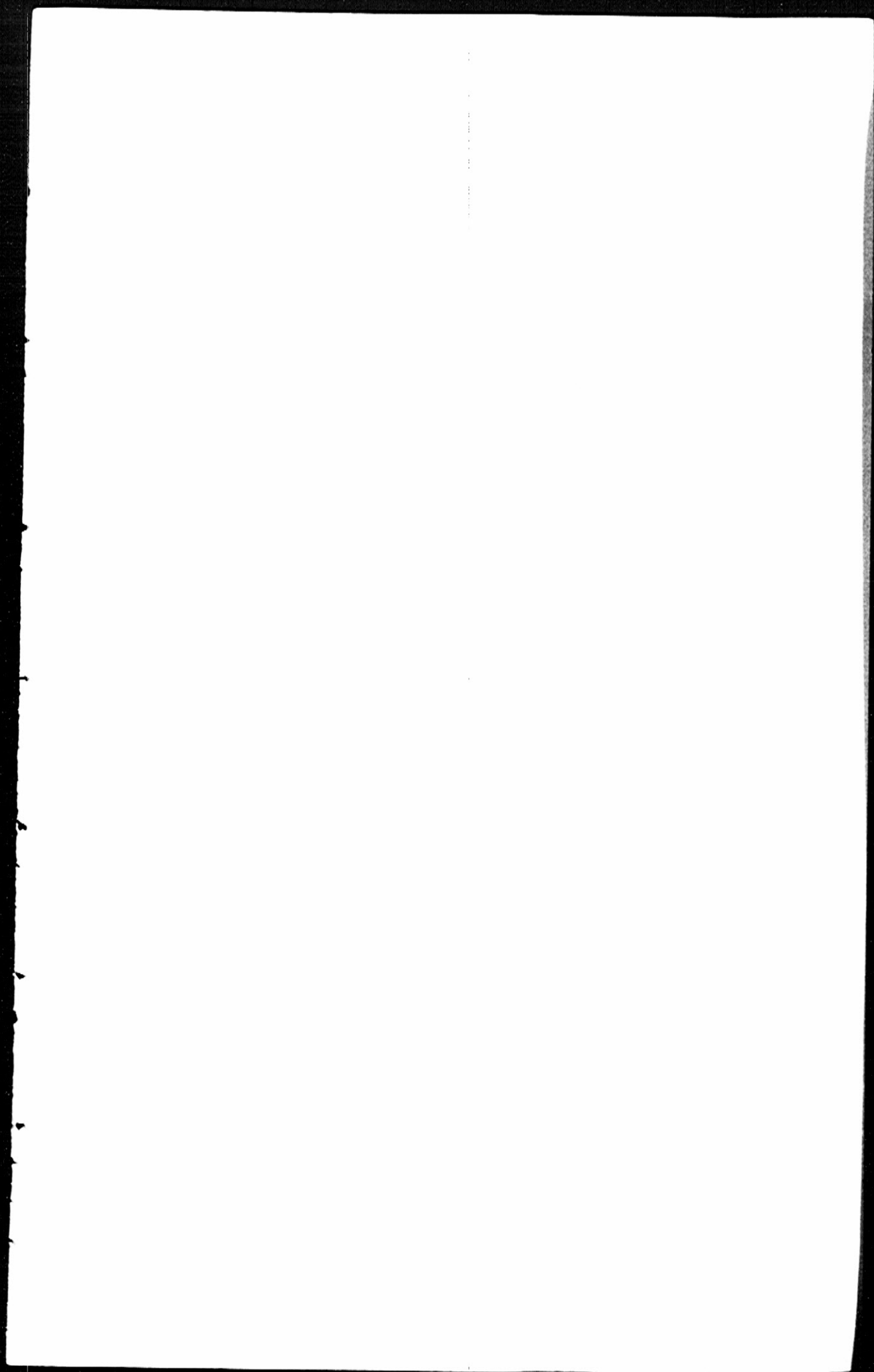
APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals
for the District of Columbia Circuit

FILED JUL 15 1966

Nathan J. Paulson
CLERK

Friedlander & Friedlander
Mark P. Friedlander
Mark P. Friedlander, Jr.
Blaine P. Friedlander
Attorneys for Appellants
1210 Shoreham Building
806 - 15th Street, N. W.
Washington, D. C. 20005



(i)

QUESTIONS PRESENTED

1. Where four reputable and responsible business men and two reputable and outstanding attorneys all testified to the making of an agreement and gave the terms thereof and the documents support their testimony given at trial, is it error for the trial court to reject this unimpeached testimony and make a finding contrary thereto, based on no evidence?

2. Where six unimpeached and creditable witnesses state the terms of an agreement made, is it error for the trial court to accept the denial by an impeached and discredited witness and find that no such agreement was made?

3. Did the trial court err in its legal judgment that statements of the oral agreement made were incompetent conclusions rather than factual testimony?

4. Where testimony is admitted without objection, may the trial court, without notice to counsel, determine in its own mind that the evidence was incompetent and make no statement concerning same nor give notice to counsel that it considered the answer as incompetent conclusions — particularly where it over-ruled an objection in the defendants' case, allowing such testimony to be admitted?

5. Where a contract is breached within the statutory period and within the statutory period suit is brought, the statute of limitations is not applicable.

6. Did the admissions by the appellants that they had not contacted the appellee Perper but had contacted the appellant Margolius, both of whom were members of the same promoters' group, amount to a failure to contact sufficient to create an abandonment or support a finding of laches?

7. Where appellants were under the misapprehension that without a written document they could not establish their claim, was the delay of approximately a year

(ii)

between their full knowledge of the breach and their bringing suit, sufficient to constitute a laches?

8. Where appellee Frank M. Perper acted wrongfully, may he assert the equitable doctrine of laches in the absence of a long lapse of time or in the absence of any proof of inequity in allowing appellants to assert their rights?

9. Where parties form a joint venture and a portion of said venture is completed through the efforts and monies of all venturers, may a breaching co-venturer successfully assert lack of consideration as defense to a suit for the breach?

10. The statute of frauds does not apply to a joint venture to purchase and develop real estate either because of its possibility of non-performance in one year nor because it involved real estate.

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,073

ROBERT B. WEISS
JACOB M. BROIDIE
NORMAN FINKELSTEIN
and
MORRIS D. STOLAR,

Appellants

v.

FRANK M. PERPER
HENRIETTA PERPER
HAROLD E. PERPER
JULIAN SAVAGE
ALAN SAHM
and
MARTIN PERPER,

Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANTS

JURISDICTIONAL STATEMENT

A complaint was filed by Robert B. Weiss, Jacob M. Broidie, Norman Finkelstein and Morris D. Stolar on November 2, 1962 against Frank M. Perper; his then wife

Henrietta Perper; his sons, Harold Perper and Martin Perper; his step-son, Allen Sahm; and one Julian Savage, an accountant and associate of Frank M. Perper, the foregoing defendants all being appellees herein. Bernard Margolius and Ralph Deckelbaum were named as defendants but no relief was sought against them, they being named merely as necessary parties. They are now appellants in the companion appeal.

The appellants herein made claim against the appellees, asserting a right to share in the Holiday Inn motels erected by Frank M. Perper or other appellees in the metropolitan area of Washington, D. C., from which they claim they had been excluded although, they asserted, a joint venture had been created by oral agreement between the parties to jointly develop the said metropolitan area.

For a defense to this complaint, the appellees deny any partnership or joint venture with the appellants, except as to the Holiday Inn motel at Shirley Highway and Glebe Road in Arlington, Virginia. The appellees pleaded the statute of fraud, laches or the statute of limitations and want of consideration.

The cause was tried by the court without a jury and from the decision of the trial court, denying the existence of any agreement for joint venture, the appellants appealed. The District had jurisdiction under Section 11-521 (a) of the District of Columbia Code, 1966 Supplement, and FRCP 13 (g). This Court has jurisdiction under Section 1291, Title 28, United States Code Annotated.

STATEMENT OF CASE

The Holiday Inns of America, Inc. is a corporation principally engaged in the franchising of persons, corporate or individuals, who operate motels under their name, Holiday Inn, nationally, although it also owns and operates under its own name certain motels throughout the country. Because of the success of Holiday Inns, the large number existing in the country and the successful referral service

established, these franchises are much sought after and are very valuable.

The appellant Weiss had known Bernard Margolius for approximately ten years and was very friendly with him and Margolius had known appellant Finkelstein for a long period of time inasmuch as they had gone to school together. The appellants Stolar and Margolius had been friendly for approximately ten years. Although Mr. Margolius had known of Mr. Broidie, he had never been introduced to him but had often seen him and knew who he was.

The four appellants herein had been engaged in business together for many years and had a very friendly relationship.

None of the appellants knew Frank M. Perper or his family. Bernard Margolius and Frank M. Perper had been partners in the erection and operation of Holiday Inn motels throughout the country but had never attempted to develop the Washington, D. C. metropolitan area. The appellants herein knew that Bernard Margolius, in addition to being an excellent lawyer, had been very successful in the creation and operation of Holiday Inns.

Appellant Weiss was a real estate broker and had engaged in the business of building and developing. He had been connected with the real estate business since 1947. The appellant Stolar had been engaged in the real estate business for approximately twenty years. Appellant Broidie, although not a real estate broker, was occupied in the building business. Norman Finkelstein was a licensed real estate broker, concerned in the development of land in the metropolitan area of Washington, D. C. for many years. All of the appellants had knowledge of locations in the area suitable for real estate projects, including motels.

There came a time in the spring of 1959 when the four appellants consulted together about the acquisition of a site at Shirley Highway and Glebe Road in Arlington, Vir-

ginia, and they reached the conclusion that this was an ideal place upon which to build a motel. They knew that Bernard Margolius had been very successful in the motel business and they sought him out. When they asked him if he would go in with them in the creation of a Holiday Inn motel at said site, he advised them that he had an arrangement or partnership with Frank M. Perper whereby he never built a motel without Perper being in it with him nor had Perper built a motel without Margolius being in the deal. Therefore, he would have to contact Perper and, if he went into the deal, it would have to include Perper. This was apparently no obstacle to the agreement and, as a result of arrangements made by Bernard Margolius, a meeting was arranged for April 26, 1959 at a Holiday Inn at Richmond, Virginia. At said conference in Richmond, Virginia, it was orally agreed between the four appellants herein and Margolius and Perper that they would build Holiday Inns and develop the metropolitan area of Washington, D. C. with such inns. This agreement was subject to the following contingencies:

1. That they could acquire the site at Shirley Highway and Glebe Road in Arlington, Virginia and build a motel thereon.
2. That they could get a franchise from Holiday Inns of America, Inc. for this site.
3. That sufficient investment capital could be obtained for the building of said motel.

It was further agreed that the promoters' interest would be evenly divided between appellants' group and the Perper-Margolius group. Although each group was to have 50% interest, such interest might be reduced equally, depending on what portion of the interest they might have to relinquish to the venture capital—in other words, if it became necessary to give 50% of the interest in the motel to outside capital, the Perper-Margolius group would then have 25% interest and the appellant group would then have 25% interest. There were no arrangements made at the

Richmond meeting, or contemplated, that either group would have anything to say about how the other group shared its interest between its members.

After the meeting in Richmond, the appellants returned to the District of Columbia and acquired a binding option on the site at Shirley Highway and Glebe Road in Arlington, Virginia.

Later the appellants Weiss and Broidie, by arrangement, went to Memphis, Tennessee, the main office of Holiday Inns of America, Inc., where they conferred with the chairman of the board of said Holiday Inns of America, Inc.

At some time unknown to the appellants, appellees Julian Savage and Ralph Deckelbaum acquired part of the interest of the Perper-Margolius group. Julian Savage was a certified public accountant and a lawyer and had and was performing accounting services for the appellants. He had and was also performing accounting services for the appellee, Frank M. Perper, and he was a brother of Bernard Margolius.

When Weiss and Broidie returned from Memphis and from their meeting with the chairman of the board of Holiday Inns of America, Inc., Julian Savage, acting on behalf of the joint venture, confirmed the arrangements that had been made by a letter dated June 6, 1959 (Plaintiffs' Exhibit 4, JA 371). In that letter of confirmation Julian Savage said, "Will you kindly confirm to us that you are holding the franchise for this site, together with the area, except as to your company-owned motel site, pending our formal application."

On June 13, 1959 Frank Perper made application to Holiday Inns of America, Inc. for a franchise for the Shirley Highway-Glebe Road site (Plaintiffs' Exhibit 20, 21, JA 403, 405). The appellants did not know how he applied nor did they know the contents of this application until after the suit was brought.

The appellants were busy during this period in acquiring the land, getting the plans and specifications approved, and in general the appellants together with Frank Perper and Bernard Margolius and Ralph Deckelbaum worked conscientiously and hard to complete the motel and to develop the area in that appellants sought sites, none of which were apparently satisfactory to Frank Perper.

Outside investment capital was obtained to supplement the funds of the joint venture and it then became necessary to reduce to writing the arrangements between the promoters and the investors. Ralph Deckelbaum undertook to prepare agreements which would be satisfactory to the promoters and the investors and to the attorneys of the investors. The reason for having the joint venture agreement in writing was not to reduce to writing the agreement between the promoters but to reduce to writing the agreement between the promoters and the investors. Mr. Deckelbaum's clear explanation of this joint venture agreement appears on page 20 of the brief on behalf of Margolius and Deckelbaum and is a quotation of his testimony (JA 288, 289). This joint venture agreement, Plaintiffs' Exhibit 8, was actually not completed until the end of October 1959.

Apparently at this time Perper was involved in a dispute with Margolius relating to a motel in another location. On October 2, 1959 Mr. Perper appears to have made known to the Holiday Inns of America, Inc., through the chairman of the board, that Margolius was no longer to be with him on future deals. He requested the Holiday Inn corporation that if Margolius or *anyone else* wanted a Washington, D. C. area franchise, to let him, Perper, know first and to give him ten days to decide whether or not he wanted it. He explained to them (Defendants' Exhibit 45, JA 421, 422) that he wanted them to promise him that they would give him the so-called first refusal.

On June 13, 1960 (one year after the application) the Holiday Inns of America, Inc. sent to Frank Perper a

license agreement (this is the franchise) but said license agreement was actually dated the 15th day of January, 1960. The agreement contained the following language:

"FIRST: Licensor hereby grants the licensee, subject to the terms and conditions hereof, a non-assignable, exclusive license to use said System in the construction and operation of one or more Holiday Inns within, and only within, the metropolitan area or areas, described as follows (hereinafter referred to as the 'license territory'):"

Although following that is a typed portion, the evidence is uncertain as to when the typing occurred but it is clear from the testimony in the case that there was originally inserted in the handwriting of Frank Perper his conception of the franchise, in which he described the license territory as Arlington, Virginia and Washington, D. C. The testimony in this case establishes that Perper obliterated this writing and initialled the change which was also initialled by an officer of Holiday Inns. The obliteration was so complete that expert examination and testimony was required in order to determine what had been written in the obliterated portion.

In the license agreement it was a part of the printed form and below the licensed territory description was printed the following:

"Licensor will not approve of site under any other license and will not itself operate a Holiday Inn within said territory without licensee's approval so long as licensee shall perform the agreements on its part herein contained."

Although the original license agreement had been issued to Frank Perper, the franchise had been paid for by joint venture and the joint venture owned the motel for which the franchise had been given. Later, on April 25, 1961, a substitute license was made in which Frank Perper, Harold Perper and Edwin Cohen were listed as the licensees.

Although the Holiday Inns of America, Inc. claimed

that they did not grant area franchises, on the same day that they granted the Shirley Highway-Glebe Road franchise they granted Frank Perper a franchise for the city of Winchester, Virginia and although they claimed that they had not granted an area franchise for Frank Perper, they did establish that they had given him the protection of the area, which amounted to the same thing.

In any event, there came a time when the appellants learned that Frank Perper was proceeding to develop the metropolitan area of Washington, D. C. without them under the "protection" which had been granted, or which flowed from the original Shirley Highway-Glebe Road franchise. When they learned of this development, they contacted Margolius, the member of the opposite promoter group with whom they had dealt and although he confirmed to them that the original agreement made in Richmond encompassed the metropolitan area, he did not feel that they could do anything about it and he, personally, did not want to be involved.

The appellants were under the misapprehension that partnerships or joint ventures involving real estate had to be in writing and they felt that they had no paper writing from which they could legally establish the agreement that had been made. The letter of June 6, 1959 had been forgotten by them and they did not know that Frank Perper had indicated his conception of their arrangement by his insertion on the franchise agreement dated January 15, 1960. They felt, however, that if Frank Perper could develop the area on the basis of the joint venture, they, too, would have a right to develop the area because their position was the same as his in relation to the original motel from which the protection flowed. They selected a site in Maryland within the metropolitan area, submitted their check for \$10,000.00 and applied for a franchise. They were advised that Holiday Inns of America, Inc. were committed to Frank Perper for the area and their request for a franchise was rejected. They were further advised that they had to secure Perper's approval in order to

obtain a franchise in the metropolitan area of Washington, D. C.

It was not until Perper began to solicit business away from the Shirley Highway-Glebe Road motel that they felt that something had to be done. At this time they remembered the letter of June 6, 1959, written by Julian Savage, and they then sought advice of counsel and learned for the first time that a joint venture, even though it involved real estate, need not be in writing. So, on November 2, 1962 a suit which had been in the process of being prepared for sometime was filed.

STATEMENT OF POINTS

1. The Court erred in finding in favor of the Appellees and in dismissing the complaint on the merits.

2. The Court erred in holding as a fact that there was no agreement made to create a joint venture, when all the credible evidence established the existence of such agreement.

3. The Court's findings of fact were clearly wrong and not supported by any credible evidence.

4. The Court erred in holding that the Appellants' failure to assert any claim timely was an abandonment of any right of interest they had in the joint venture.

5. Although the trial Court deemed it unnecessary to pass upon the defense of the statute of frauds, your Appellants assert that the statute of frauds does not apply in this case.

SUMMARY OF ARGUMENT

1. The four appellants testified that on April 26, 1959 they met with Frank Perper, Bernard Margolius and Ralph Deckelbaum in Richmond and there reached an agreement after some hours of discussion and they stated the terms of the agreement reached. The questions were not

objected to and there was no motion to strike the evidence; the Court on occasion made inquiries concerning the facts; counsel for the appellees did not attempt to find out the substance of the conversations between the six principals (Deckelbaum was not present during all of the conference) although their opportunity to cross-examine was not curtailed. From the record in this case it can be ascertained that ample discovery from the appellants was obtained by the appellees and all detailed phases of the meeting in Richmond were fully explored. The only denial was a perfunctory denial by Perper that he never had any agreement with the men, referring to the appellants (JA 314).

2. The appellee Frank M. Perper, the only person who did not agree upon the result of the Richmond meeting, but who did participate in the building of the motel and who did make use of the protection flowing from this first Washington area Holiday Inn motel, was impeached on numerous occasions on material matters upon which he could not have been mistaken, all as fully discussed in the brief of appellants Margolius and Deckelbaum on page 29 thereof, et seq.

3. The testimony of the appellants and the testimony of Margolius and Deckelbaum, relative to the agreements reached in Richmond, were statements of fact and not incompetent conclusions and have evidential value.

4. The testimony of the appellants Margolius and Deckelbaum as to the agreements reached in Richmond were admitted in evidence without objection. In its opinion the Court described this testimony as incompetent conclusions, but the Court had made no statement to that effect to counsel and, in fact, had over-ruled the motion to strike similar testimony given by Perper (JA 314), thus fairly implying that it considered this type of testimony competent. The failure of the trial Court to apprise counsel that it considered this testimony incompetent conclusions was unfair. The Court, itself, could have, and should have under these circumstances, required the appellants

to predicate their conclusions by a recital of the substance of the conversations, as far as they were able to recite the same. To allow the appellees to avoid a contract made by Frank Perper on this basis constituted an injustice and denied a fair trial to the appellants, particularly so when the Court noted that counsel for the appellees sagaciously had not examined, implying that appellees' counsel, as well as the Court, had noted the so-called error and was able to take advantage of it, although the interest of justice required that the case be fairly presented.

5. The statute of limitations did not apply because the suit was brought well within the three year statute of limitations.

6. Where there was approximately a year's delay between the bringing of the suit and the breach of the contract by appellees and where the appellants had not contacted Frank Perper but had contacted his associate venturer, Bernard Margolius, and where there was no proof of any inequity in allowing appellants to assert their rights, the document of laches was not applicable.

7. There was ample consideration in view of the mutual promises and the completion of the first stage of the joint venture.

8. Although this was a joint venture to acquire and develop real estate, it did not have to be in writing and was not in violation of the statute of frauds.

ARGUMENT

I

Appellants' evidence of the joint venture agreement was overwhelming and beyond question.

On the 26th day of April, 1959 a meeting was held in one of the Holiday Inns in Richmond, Virginia, and this date is confirmed by the testimony of three credible witnesses. (Robert B. Weiss, JA 190; Jacob M. Broidie, JA 233; Norman Finkelstein, JA 240) The witness Margolius could not fix the date and the witnesses Stolar and Deckelbaum were not asked the exact date. The witness Frank M. Perper thought that it was around the first week in April, 1959.

To this meeting there came Bernard Margolius and Frank Perper, who had been together as partners on every Holiday Inn deal they had been in throughout the United States since 1950. They represented one group of negotiators. Present in Richmond but not attending the meeting as such was Ralph Deckelbaum, a partner in most of the motel deals that Margolius and Perper had made. On the other side was a group consisting of Robert Weiss, who was a friend of Margolius and who had known him up to ten years and was very friendly with him. Also present, as an associate of Weiss, was Norman Finkelstein, who had gone to school with Bernard Margolius and had known him for many years. Another of the Weiss group attending the Richmond meeting was Morris D. Stolar, who had known Margolius for approximately ten years. Also in attendance was Jacob M. Broidie, who had not, prior to the said meeting, been introduced to Margolius but Margolius had seen him many times and knew who Broidie was. These people gathered in Richmond for the purpose of discussing the development of the Washington, D. C. metropolitan area with Holiday Inns, there being none in existence in this area at that time. Weiss, Finkelstein, Stolar and Broidie were expe-

rienced in the real estate field—three of them as real estate brokers and developers and one as a builder. They were familiar with land values and land in the metropolitan area. They had been in business together from time to time and their association was close and friendly. All had known, or known of, Bernard Margolius and he was well-respected in the community as an outstanding lawyer as well as a successful entrepreneur in the motel field. It was because of his reputation in this second category that these four builders and real estate men had sought an association with him. The four appellants had located a piece of land and were certain that they could acquire it and have it rezoned for a motel, said land being located at Shirley Highway and Glebe Road, a very important intersection in Arlington County, Virginia. However, they were not interested in building only one motel; they were interested in developing the entire metropolitan area. They had heard of the Holiday Inns of America, Inc. and knew that the franchises from this corporation were very valuable. The issue before the trial Court was basically what arrangements had these people made in their meeting in Richmond in regard to the aforesaid plan to develop said area.

We propose to examine the testimony of each group—that is to say, the Weiss group and the Margolius group.

Taking up the Weiss group first, we find Robert Weiss telling the Court that at the meeting in Richmond on the last Sunday in April, 1959 there was a discussion which resulted in an agreement to enter into a partnership arrangement or joint venture to specifically develop a site that they had found at Shirley Highway and Glebe Road in Arlington, Virginia, and that they would try to find other locations so that the joint venture could develop the Washington area with Holiday Inn motels. (JA 190, et seq.) Weiss further explained that they had agreed at this meeting to divide the shares, 50% to the Weiss group and 50% to the Margolius group. During the examination the Court interrogated the witness as to his answer without ever

indicating that it did not consider the evidence competent. There was no discussion as to how each group would divide its own share; it was a group transaction which proposed an even division of shares between the Weiss group and the Margolius group. The witness also stated that at the said meeting in Richmond the two groups discussed the necessity of investment capital—they anticipated the need of additional financing over and beyond the investment capital and they would need investors. They knew at that time that they would not be able to determine what they would have to pay out in shares to entice capital investment but they arranged that the shares would be diminished equally for each of the two groups by whatever they had to give to capital investors—in all events, what was left would be divided fifty-fifty between the Weiss group and the Margolius group. The Court continued to interrogate the witness on this point, without any indication that it considered the evidence incompetent. The witness said, in response to a question concerning contingencies, that the parties assembled at Richmond discussed the fact that a broker had offered the Weiss group an option on a site that a real estate builder had acquired; that the joint venture could buy the contract at a profit to the real estate builder, subject to zoning. The builder would have to initiate and acquire the zoning on behalf of the joint venture. The agreement was that the joint venture would have to actually acquire a site and build a motel because, otherwise, there would be no possibility of acquiring a Holiday Inn franchise either for the specific site or for the area. The witness stated that this point also was brought up at the Richmond meeting. During the taking of the testimony (JA 193) the question was asked: "Was it also conditioned, any agreement you made, upon your getting, obtaining a franchise for this particular location?" To this question Mr. Galihier objected on the grounds that it was leading but he did not say anything about its being an incompetent conclusion on the part of the witness' answer, and the objection was sustained. Thereupon, the witness, on his own, testified that it was discussed specifically that the

franchise was essential, both from the standpoint of getting other sites as well as being a necessity to acquire the best financing available.

The witness Morris Stolar testified, "The substance of our agreement was that we would pursue the obtaining of the site at Shirley-Glebe and to build a Holiday Inn motel on that site and, stemming from that, to search for other sites in the metropolitan area of Washington and to develop the area with Holiday Inns in that area . . ." He also testified as to the financial interest which does not seem to be in dispute. (JA 224)

Jacob Broidie testified (JA 234) that they agreed in their discussion to develop the Washington area with Holiday Inns, starting with the Holiday Inn to be located at Shirley Highway and Glebe Road in Arlington, Virginia. He also testified as to the same arrangement of division of shares. On cross examination (JA 235) Mr. Galiher, attorney for the appellees, directed the following question to him: "And you have told us it was your understanding, as a result of the Richmond agreement, that you would continue to be in business with these three other gentlemen that you had been associated with before, as well as the other folks that you have mentioned, in the building of motels in the Washington area, is that right?" Mr. Broidie answered: "If you have reference to the meeting in Richmond, yes."

Norman Finkelstein gave a description of the meeting in Richmond (JA 240, et seq.) wherein he described that the meeting lasted several hours and there were intermittent interruptions. He further testified that as a result of this meeting there was a definite agreement reached although it was not reduced to writing and that the agreement never was reduced to writing, but that they did reach an agreement. He was asked what the agreement was and he said: "They would build Holiday Inns and develop the metropolitan area of Washington with Holiday Inns; that the beginning of the joint venture was to be a Holiday Inn

to be built at Shirley Highway and Glebe Road and this first building was contingent upon obtaining the property and a franchise which would give them the right to develop the rest of the Washington metropolitan area." He also told about the division of the interest between the two groups, about which there appears to be no dispute.

Mr. Deckelbaum did not remember much about what happened in Richmond because he was not there at the meeting very long but he did remember that on the following Saturday (JA 264) they had a meeting in Mr. Margolius' office and that the same group was there. He remembered that Mr. Perper had been in touch with Memphis and that the franchise for the Shirley-Glebe site could be obtained. He remembered that they had a plat at this meeting and discussed how much the site would cost and how much the motel would yield as far as investors were concerned. They were trying to determine the general lay-out of the motel. He remembers a general discussion between Perper, Savage and everyone there with respect to a franchise and to the development of other motels in the Washington area. He was then requested by the Court to state what each of the persons present at the meeting had said and he told the Court: "Judge, I could not pin down at this stage exactly who said this. This was discussed amongst themselves and everybody was talking from time to time." The Court then said: "Very well, you may proceed." The witness then described about the division of interest between the groups, that they were to seek outside capital from investors and that whatever they had to give up to attract this investment capital was to be deducted from the whole and whatever remained was to be divided 50% to the Margolius group and 50% to the Weiss group. The Court then asked the witness: "Yes, but what was the joint venture, Mr. Deckelbaum?" The witness answered: "They were to get this franchise for Shirley Highway and Glebe Road and by so doing would obtain an understanding or commitment for the Washington area and they were to go out and

seek other locations in the Washington metropolitan area for development of motels." Mr. Galiher objected to the answer, specifically to the words "by so doing." The Court let the answer stand after indicating that the objection really went to the probative weight and the Court did not at that time suggest that the evidence was incompetent conclusions. The witness went on then to describe the further conversations at the meeting. It should be noted that Mr. Galiher's objection went to that part which referred to the commitment for the Washington area and not to the agreement that was being reached.

For the other group, Mr. Margolius, being called as a witness by the appellants, stated that he and Mr. Perper had come to an understanding with the plaintiffs that they would enter into this joint venture to develop a Holiday Inn motel at Shirley Highway and Glebe Road in Arlington, Virginia and to develop the Washington area with Holiday Inns. (JA 127) The Court then required the witness to repeat the answer as it wanted to hear it exactly but did not at that time strike the answer as being an incompetent conclusion. The witness repeated what he had said and then went on to give what was agreed upon as to the shares for each group; he also described which was the promotion group as distinguished from the investors to be obtained. He was asked what was the understanding or agreement as to what they were referring to and he stated that it was the Washington, D.C. area and the surrounding counties. In his testimony, in response to a question asked him, Mr. Margolius stated: "Well, it was my understanding with Mr. Perper, of whatever motels he went into and developed, I would have an interest in with him." When Mr. Galiher heard this answer, he asked that this go out, and the Court, treating it as an objection, sustained the complaint of Mr. Galiher, saying, "Of course, that is conclusion—whether there was any understanding or not." The witness was then asked what was your agreement with Mr. Perper to which there was no objection and which question the Court did not criticize. The witness answered as fol-

lows: "My agreement with him was beginning with the Holiday Inn in Charlotte, North Carolina, that I was to receive half of whatever he had in any Holiday Inn or any motel." In response to further questions the witness explained that these interests were not given him free but that he paid for them but that he had the right to participate. The witness then stated that prior to 1959 Mr. Perper never had an interest in any Holiday Inn in which Mr. Margolius did not also have an interest and that he, Margolius, never had an interest in any Holiday Inn motel prior to 1959 in which Mr. Perper did not have a share. He further said that he had told Mr. Perper when he brought the people down there to him "We have this opportunity to develop the Washington area." (JA 131)

Mr. Perper was the only other witness who testified about this meeting and his testimony appears in JA 314 and 316, et seq. It is interesting to note that Mr. Perper's counsel asked Mr. Perper whether there was ever any discussion either at the meeting in Richmond or thereafter between anybody and himself in respect to the building and development of any motel or motels other than the one at Shirley Highway and Glebe Road in Arlington. To this question Mr. Perper answered: "I never had any agreement with these men . . ." When Mr. Perper started to say something else, the Court stopped him and Mr. Hilland attempted to strike out the answer as not responsive because Perper had been asked whether there was any discussion, not whether there was any agreement, but the Court let the answer stand. Mr. Hilland then renewed his motion and the Court then stated that it had ruled that the answer was responsive.

In the pre-trial depositions, Mr. Perper's answer to an inquiry as to what happened down in Richmond was that he told these boys he had seen the ground and that he was not impressed and that the parent company was not impressed and that the conversation did not last more than twenty minutes to a half hour.

This is the evidence concerning the Richmond meeting and we submit that the overwhelming testimony is to the effect that there was a meeting in Richmond and that the agreements were reached as is indicated by the testimony. However, in addition to this testimony, the Court is referred to the fact that the motel at Shirley Highway and Glebe Road in Arlington, Virginia was built and that the parties divided their interest in accordance with the arrangements made at Richmond, subject to a distribution of a portion of the Margolius group's share to additional persons. It is further noted that as early as June 13, 1959 formal application for the franchise for the site was made and, most important, that on June 6, 1959 Julian Savage, an accountant who did work for both groups and was a part of the Perper-Margolius group in this enterprise, wrote to the Holiday Inns of America, Inc. to confirm arrangements made by Weiss and Broidie with the Holiday Inns in Memphis, Tennessee. In that letter (Plaintiffs' Exhibit 4) Savage clearly states the position of the joint venture, that they were to have reserved for them the particular site plus a reservation of the area.

So, we have in writing a statement by one of the Margolius group, one of the appellees herein, as to his understanding of the arrangements and we have Frank Perper writing on the franchise in his own handwriting his understanding of the arrangements, namely, "Arlington, Virginia and Washington, D. C." If he had made no arrangements, why was he seeking a franchise for the joint venture for more than the one site?

It may be argued that the Holiday Inns of America, Inc. did not give any franchise for the area. Even if this were true, it is of no moment in this case because we are dealing only with the contract between the Margolius-Perper group and the Weiss group and whether or not the Holiday Inn corporation broke its promise, or even made one, is of no moment. However, we have no problem with that question because in the Savage deposition (JA 57) it is clearly established that Mr. Perper had the protection of

the franchise right which stemmed from the Shirley-Glebe site motel; that when Mr. Savage wrote the letter of June 6, 1959, he wrote it on behalf of the joint venture (JA 58); that he knew that firm arrangements had been made sometime before June 6, 1959 as to the joint venture was confirmed by his description of the division of shares as outlined by other witnesses. (JA 61) It was also established that the witness Savage thought that the right to protect the franchise was inherent in the franchise agreement made for the Shirley-Glebe motel and that the franchise agreement for said site was the reason for the protection that the parent company gave (JA 63); the witness knew that whenever anyone wanted to develop the Washington area after the Shirley-Glebe motel had been franchised, he had to talk to Mr. Perper who was the person who was named in that franchise agreement.

The Court should also consider the testimony of William Mann, employee of the Holiday Inns (JA 91) where he testified to having written a letter to Robert Weiss stating they were committed to the Washington area and (JA 92) committed to Mr. Frank Perper in that area; that they could not allow Mr. Finkelstein to have a franchise in that area without Mr. Perper's permission. He expressly rejected the idea that the franchise for the Shrine carried with it the commitment for the Washington area, but that the Washington area protection was predicated on the Shirley Highway-Glebe Road motel franchise.

II

The testimony of the appellants and the testimony of Margolius and Deckelbaum were statements of fact and not incompetent conclusions.

It has often been said that non-expert witnesses cannot give opinions or conclusions relative to contracts but the statement, sometimes referred to as the opinion rule, is misleading and has been criticized by judges and

text writers. The difficulty of determining fact from opinion in the course of a trial has often caused proper evidence to be excluded or improper evidence to be included.

In McCormick on Evidence at page 22 this problem is discussed. In Volume VII, Wigmore on Evidence, §1918 at page 14, and §1922 at page 20, this subject is carefully analyzed and discussed. In the brief for appellants Margolius and Deckelbaum there is a discussion of these texts and we will not repeat that. We propose, however, to cite to the Court the following cases which we think sustain our position—that is, that a witness is permitted to state the fact of an agreement or what an agreement was:

In the District of Columbia we have no case directly on point but we have suggestions from the cases which lead to the conclusion that the ancient opinion rule is not in effect in the District of Columbia. In *Waters v. Anthony*, 20 App. D.C. 124, 133, the question was the arrest. A question was asked as to whether the arrest made and complained of was made in the arresting officer's official capacity. This Court held that it was a proper question although it did call for a conclusion.

In *Wagner v. Lucas*, 59 App. D.C. 219, 38 F.2d 391, evidence given by a son as to the proportionate amount of time an automobile was used in his father's business was held proper. The answer was, "My father used his automobile at least 50% in connection with his business . . . I should say that 90% of the times he left the office during the day, he would use his automobile for business." The Court of Appeals held that this was testimony of fact based on observation and judgment by a witness competent to testify in relation thereto and was not objectionable as merely opinion evidence.

In the federal case of *New York Life Insurance Company v. Rees*, 19 F.2d 781, a witness for the plaintiff who was surety on the debt of Rees to the bank in which the policy was placed to secure testified that in 1921 he had

a conversation with a vice-president of the bank in which the vice-president agreed to hold the policy as security for the witness so that if the witness paid the debt of Rees, he might have the benefit of that security. This evidence was held proper and was not an incompetent conclusion.

In *Lozier v. Groves*, 91 Iowa 482, 59 NW 285, the question was asked as to what was the consideration for the reconveyance and the answer was, "I was to have back all the notes that were executed for the land also that the mortgage was to be satisfied." The plaintiff objected on the grounds that the answers were conclusions and not facts. The Court said, "It is quite common for just such statements to be made, in giving evidence, and while, in a sense, they are conclusions, yet they are also statements of fact. No prejudice can follow from admitting such statements, as it is the privilege of a cross-examination to ascertain upon what they are based."

In *Woodworth v. Thompson*, 44 Neb. 311, 62 NW 450, in a pre-trial deposition the witness was told, "You may now state what conversation or conversations you had with the plaintiff concerning the improvements to be made on the hotel property, and when and where the conversations were had." The witness answered at great length and finally said, "This he agreed to do, and he was knowing to all this work that was done. All of it was necessary to the good of the house, and he got the benefit of it all." At the time of the trial it was objected to and the motion to strike was made as to that portion "This he agreed to do." The objection and the motion were predicated on the fact that it was a conclusion and was incompetent. The Court said, "The witness was not stating the effect of any agreement, but the language used was equivalent merely to a statement that Woodworth assented to Thompson's proposition. The answer being material and of a probative kind, it should not be struck out, where no opportunity was given by objection to the form when the deposition was taken, to establish the same fact in a more regular manner."

In *Union Hosiery v. Hodgson*, 72 N.H. 427, 57 At. 384, the Court said, "To determine who owned the coal, it was necessary to ascertain the understanding of all the parties interested in the purchase. As Morin was one of the parties so interested his understanding was material, and the testimony he offered should have been received in evidence."

In *New York Central Railroad v. The Central Railroad Company*, 136 NE 825, 243 Mass. 567, the report of a president of a railroad was admissible, particularly a portion including the statement that a contract had been made by the two corporations, as this was plainly a statement of fact and not an opinion.

In *Walgreen v. Walton*, 16 Tenn. App. 213, 64 SW 2d 44, in which a witness stated he had an oil lease from year to year and this was held not to be a conclusion of law but a statement of fact and the Court indicated that it would be difficult to express the situation in any other terms.

There are many other cases cited in the texts referred to herein and although there are some cases contrary to the cases cited herein, the criticism by Wigmore should be taken seriously as he is obviously correct.

There is another District of Columbia case of *Smith v. Doyle*, 98 F.2d 341, 69 App. D.C. 60, where a witness was allowed to state that an automobile was moving fast and this was permitted as a statement of fact and not as a conclusion.

In *Elmore County v. Moor*, 293 Fed. 297, it was held that the statement that someone had no interest in the proceeds of a contract was admissible as being a statement of fact.

In the *Michigan Mutual Life Insurance Company v. Oliver*, 256 Fed. 213, 215, in the expression "so understood between him and others" the word "understood" meant agreed and the Court held that such expression was equivalent to stating that such an agreement had been made.

There are two cases in the Supreme Court of Appeals of Virginia supporting the position which we take; they are: *C & O Railroad Company v. Arrington*, 126 Va. 194, 201, 101 SE 416, and the *Virginia Railway and P Company v. Burr*, 125 Va. 338, 349, 133 SE 776.

III

There was no abandonment or laches.

There was no basis upon which the Court could properly define either an abandonment of the appellants' claim or laches barring their pursuit of the same.

The Court is referred to the case of *Hill v. Chambers*, 63 App. D.C. 36, 65 F.2d 781, and the facts as have been given in the Statement of Facts filed herein.

The Court is also referred to *Libby v. L J Corporation*, 101 U.S. App. D.C. 87, 247 F.2d 78, and to *Rosinski v. Whiteford*, 87 U.S. App. D.C. 313 and 184 F.2d 700 (the last sentence of the opinion).

IV

The statute of frauds does not apply.

The statute of fraud does not apply although the Court indicated that it would not pass on this point because of its decision on the other defenses. However, we think it necessary to cite the authorities because this was the real defense offered by the appellees. It was the basis of a motion to dismiss at the end of plaintiffs' case and was the backbone of the defense. The Court is referred to *Libby v. L J Corporation*, *supra*, and for a case directly on point to *Workman v. Harrison*, 282 F.2d 693. Also the Court is referred to *Snyder v. Hillegeist*, 100 U.S. App. D.C. 368, 246 F.2d 649.

We do not repeat the cases cited by the co-appellants as we adopt their brief and the cases they have cited.

CONCLUSION

It is respectfully submitted that the cause should be reversed.

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REPLY BRIEF OF APPELLANTS

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 20,073

ROBERT B. WEISS
JACOB M. BROIDIE
NORMAN FINKELSTEIN
and
MORRIS D. STOLAR,

Appellants,

v.

FRANK M. PERPER
HENRIETTA PERPER
HAROLD E. PERPER
JULIAN SAVAGE
ALAN SAHM
and
MARTIN PERPER,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals
for the District of Columbia Circuit

FILED OCT 17 1966

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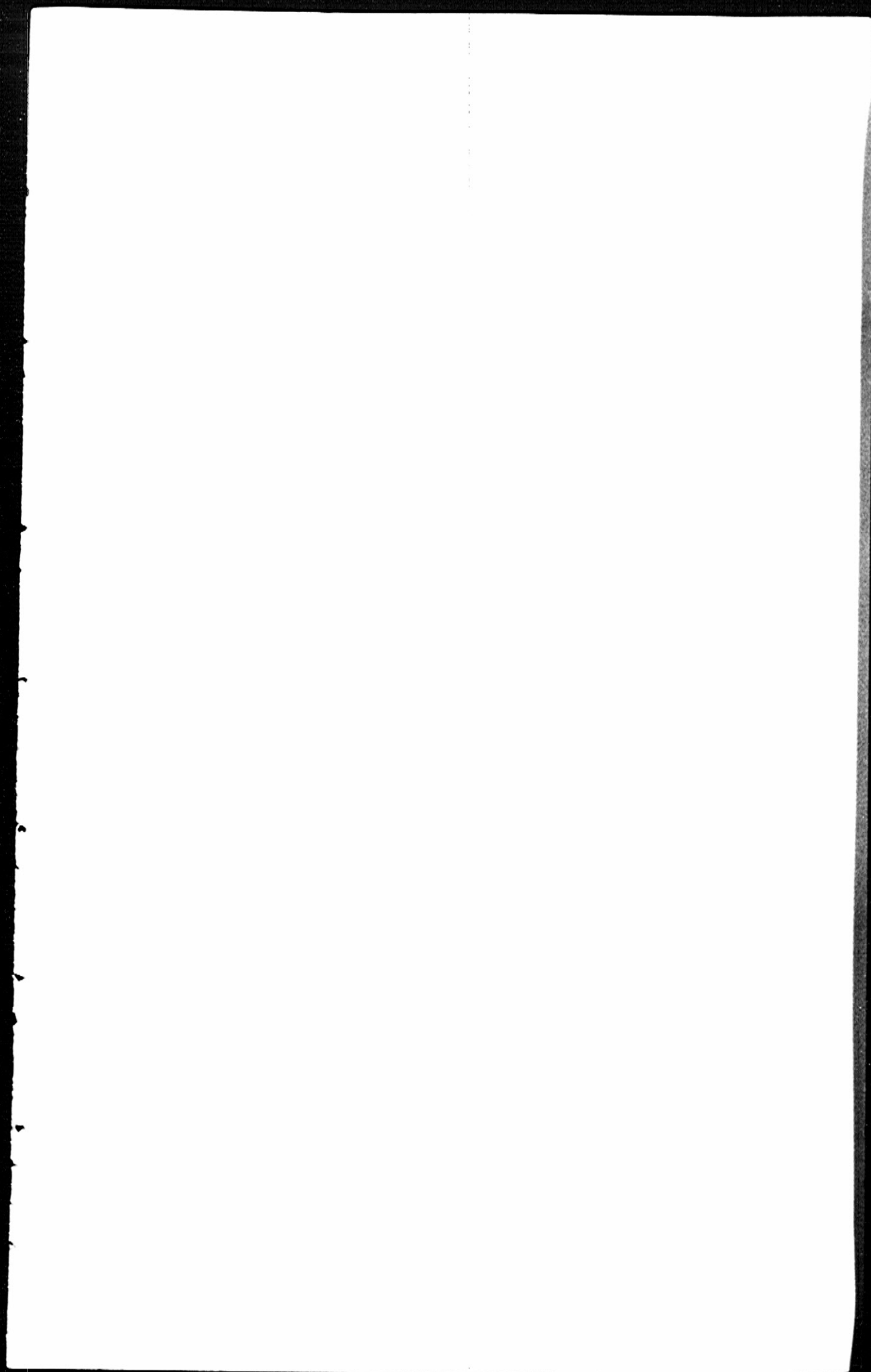
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ARGUMENT

The Trial Court May Not Make a Finding of Fact Contrary To Evidence Which Is Not Immaterial, Irrelevant, Improbable, Inconsistent, Contradictory, or Discredited.

Appellants, in their Argument Number I, have digested and pointed out the overwhelming evidence of the existence of the joint venture agreement as alleged in the original complaint. The citations to the record in support of this argument are, of course, detailed in the Brief for Appellants. In response to this proposition Appellees argued:

"Counsel for Appellants-Plaintiffs do not argue that the Findings of Fact of the trial Judge were 'clearly erroneous'. They argue that Appellants' evidence of the joint venture agreement was overwhelming and beyond question and adopt the brief of Appellants Margolius and Deckelbaum. Counsel for Appellants Margolius and Deckelbaum argue that the Findings of Fact are clearly erroneous. There is no sound basis for these contentions.

"In considering the contentions of Appellants it should be borne in mind as set forth in the provisions of Rule 52(a) of the Federal Rules of Civil Procedure that 'Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses'."

(Brief for Appellees, Argument Number I, page (20))

This, of course, is a satisfactory statement of the law as it exists in part but is not a complete statement of the law in general or in this jurisdiction.

Appellants direct the Court's attention to the opinion delivered by Mr. Justice Reed in *United States v. United States Gypsum Co.* (1948), 333 U.S. 364, 92 L. ed. 746, 765, in which he held:

"... Rule 52(a) of the Rules of Civil Procedure is applicable. That rule prescribes that findings of

fact in actions tried without a jury 'shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses.' It was intended, in all actions tried upon the facts without a jury, to make applicable the then prevailing equity practice. Since judicial review of findings of trial courts does not have the statutory or constitutional limitations on judicial review of findings by administrative agencies or by a jury, this Court may reverse findings of fact by a trial court where 'clearly erroneous.' The practice in equity prior to the present Rules of Civil Procedure was that the findings of the trial court, when dependent upon oral testimony where the candor and credibility of the witnesses would best be judged, had great weight with the appellate court. The findings were never conclusive, however. A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed."

Appellants recognize that the Trial Court has the opportunity to judge the credibility of witnesses, to observe the manner of testifying and the candor and credibility of the witnesses' presentation. Accordingly, under Rule 52 this Court must give due weight to the opportunity which the Trial Court possessed. Recognizing this, Appellants respectfully suggest that the authorities cited by Appellees and reaffirmed by *Wynne v. Boone* (1951), 88 U.S. App. D.C. 363, do not meet the legal proposition raised by Appellants on this point. The Trial Judge did not "disbelieve" the Appellants' witnesses nor find their testimony contradictory or impeached or in any way unbelievable, but simply considered the question of whether or not the witnesses were stating the fact of an agreement as opposed to what an agreement was. That is to say, the Court simply disregarded all of the evidence of Appellants' witnesses (as more fully detailed in Appellants' Brief) in making its findings of fact and final judgment. Our courts have repeatedly held that the trial judge may not do this and that a judge is not at liberty to disregard

positive testimony which is uncontradicted and not inherently improbable.

In an opinion by Justice Miller in *Stone v. Stone*, 78 U. S. App. D. C. 5, 136 F.2d 761, the Court held:

"In this case there was positive testimony, uncontradicted, and not inherently improbable. Neither a jury nor judge is at liberty to disregard such evidence. '* * * where the testimony is all one way, and not immaterial, irrelevant, improbable, inconsistent, contradicted, or discredited, such testimony cannot be disregarded or ignored by judge or jury, and if one or the other makes a finding which is contrary to such evidence, or which is not supported by it, an error results, for which the verdict or decision, if reviewable, must be set aside. To hold otherwise would vest triers of the facts in cases subject to review with authority to disregard the rules of evidence which safeguard the liberty and estate of the citizen. *Kelly v. Jackson*, 6 Pet. 622, 631, 8 L. Ed. 523'."

This was also the opinion of the Court in *George v. Capital Traction Co.* (1924), 54 App. D. C. 144, 295 Fed. 965:

"The verdict of a jury and the decision of a judge who tries a case without a jury finally determine the facts, where the evidence is of such a character that intelligent persons may honestly differ as to what was actually proven. *Murray v. Washington & Georgetown Railroad Co.*, 2 MacArthur, 195; *Pringle v. Guild et al.* (C. C.) 119 Fed. 962, 964. But where the testimony is all one way, and is not immaterial, irrelevant, improbable, inconsistent, contradicted, or discredited, such testimony cannot be disregarded or ignored by judge or jury, and if one or the other makes a finding which is contrary to such evidence, or which is not supported by it, an error results, for which the verdict or decision, if reviewable, must be set aside. To hold otherwise would vest triers of the facts in cases subject to review with authority to disregard the rules of evidence which safeguard the liberty and estate of the citizen. *Kelly v. Jackson*, 6 Pet. 622, 631, 8 L. Ed. 523'."

See also *Walker v. Warner* (1908), 31 App. D. C. 76, in which the Court also held that positive testimony, uncontradicted and not inherently improbable is *prima facie* evidence of the fact which it seeks to establish and neither a court nor a jury is at liberty to disregard it.

In the instant case, where the evidence of the joint venture agreement was overwhelming and beyond question by the testimony of responsible businessmen and members of the Bar, by the letters and documents put into evidence, and where this testimony which *prima facie* established the fact of the existence of the joint venture agreement was not immaterial, irrelevant, improbable, inconsistent, significantly contradicted, or discredited in any way, the Trial Judge was not at liberty to ignore and disregard this evidence and make findings which were contrary to this evidence. To have done so is reversible error.

Respectfully submitted,

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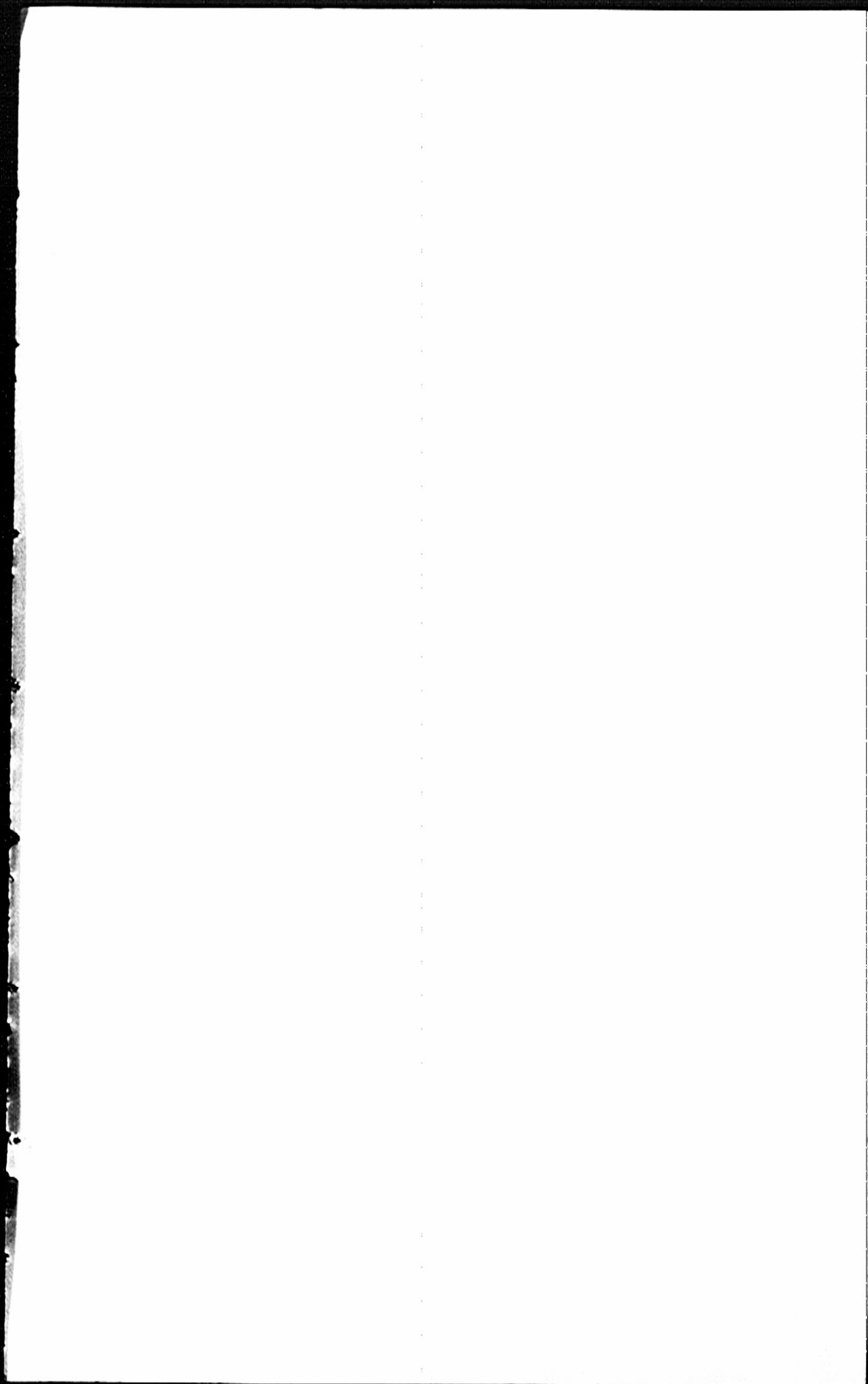
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BRIEF FOR APPELLANTS
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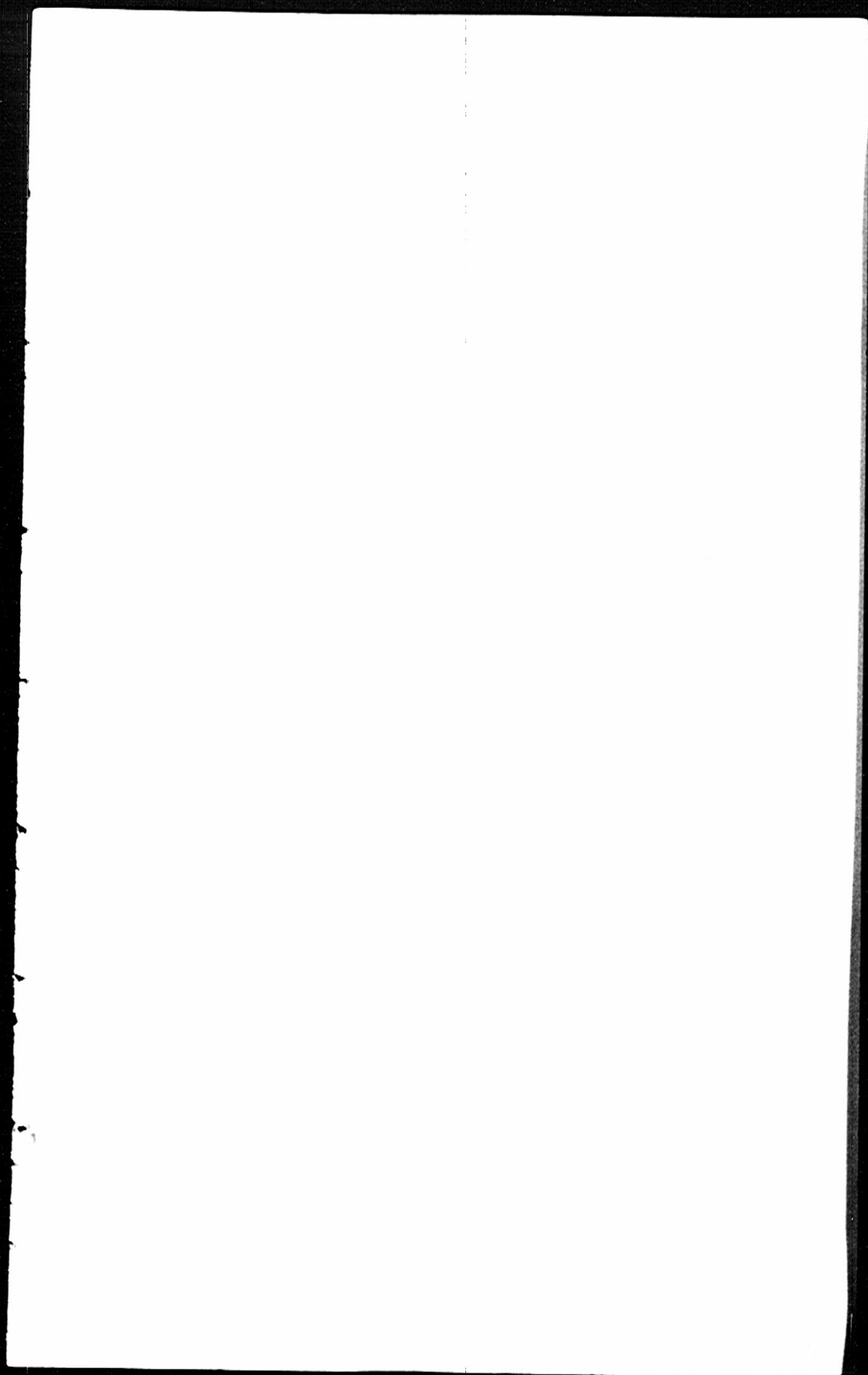
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(i)

QUESTIONS PRESENTED

1. Where a cross-claim states grounds for relief in addition to the ground stated in the complaint, is the Court required under FRCP 52(a) to find the facts specially and state separately its conclusions of law thereon as to each additional issue raised by the cross-claim as well as to the issue raised by the complaint?

2. (a) Is this Court bound by the findings of fact of a trial judge based primarily upon testimony of a party given in a pretrial deposition where his testimony therein as well as documentary evidence at the trial proves the witness to be incredible? (b) Where the crushing weight of documentary evidence (which includes admissions) shows that the conduct of a party has been that of one who has entered into an alleged oral agreement and whose conduct has been that of a member of a joint venture, does such documentary evidence outweigh the party's denial of the agreement and denial that he was a joint venturer? (c) Does the testimony of six parties to an action who have not been impeached in any instance outweigh the pretrial deposition testimony of a party who has been impeached in many instances by his own testimony and by documentary evidence? (d) Is this Court bound by findings which are not supported by the evidence?

3. (a) Where, without objection and with some participation by the trial judge in the interrogation, witnesses are asked to state and do state their conclusions as to the terms and provisions of an oral agreement, is their testimony entitled to lesser weight than their testimony would have been entitled to if they had been asked to narrate and had narrated the conversation which led to the agreement? (b) Is such testimony entitled to lesser weight than rebuttal testimony also asked for and stated in the form of a conclusion?

(ii)

4. (a) Where the purchase price of a franchise to build and operate a Holiday Inn motel was paid by a joint venture and the franchise was taken in the name of a party, who holds it for the joint venture but is not expressly designated a trustee, do rights and benefits which have their origin in and spring from the franchise inure to the party in whose name the franchise was taken or do they inure to the joint venture? (b) If the party in whose name the franchise was taken appropriates such rights and benefits to his own use and benefit, to the exclusion of the joint venture, are the members of the joint venture entitled to a judgment declaring the trust and declaring that the party holds the same as trustee for the use and benefit of the joint venture?

(iii)

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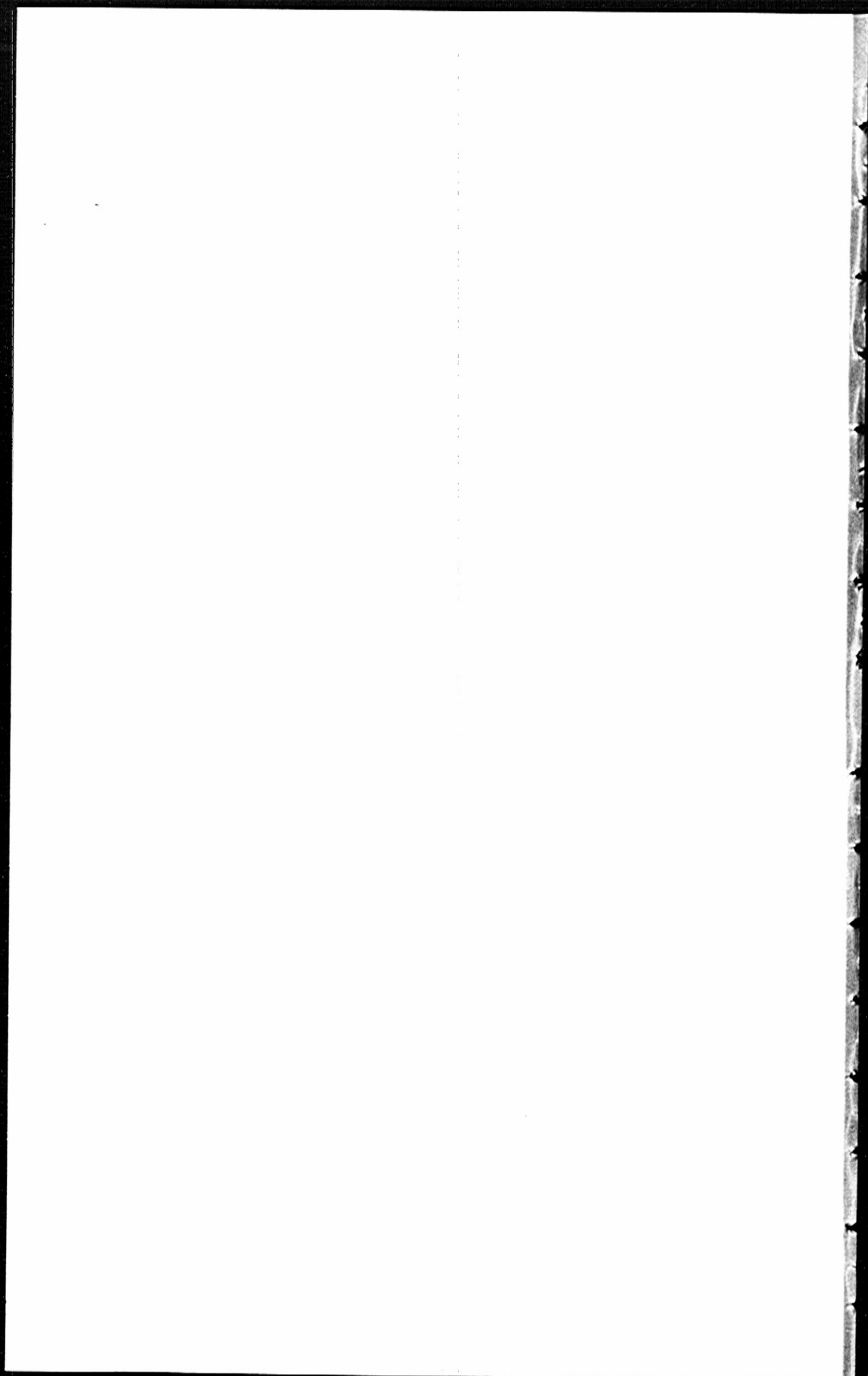
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**BRIEF FOR APPELLANTS
MARGOLIUS AND DECKELBAUM**

JURISDICTIONAL STATEMENT

This is an appeal (No. 20,074) from a judgment of the United States District Court for the District of Columbia dismissing the cross-claim of appellants Margolius and Deckelbaum. (JA 49) The District Court had jurisdiction under Section 11-521(a) of the District of Columbia Code, 1966 Supplement, and FRCP 13(g). This Court has jurisdiction under Section 1291, Title 28, United States Code Annotated.

STATEMENT OF CASE

Appellants Weiss and his joint appellants filed a complaint against appellants Margolius and Deckelbaum and the appellees. Their complaint alleged that appellants Margolius and Deckelbaum had done no wrong and did not seek any relief against them. The ground for relief against the remaining defendants was an oral joint venture agreement made in Richmond, Virginia on April 26, 1959, between appellant Weiss and his joint appellants, on the one hand, and appellee Frank M. Perper and appellant Margolius, on the other hand, creating a joint venture to construct and operate or lease Holiday Inn Motels on a site at Shirley Highway and Glebe Road, Arlington County, Virginia, and other sites in the Metropolitan Area of Washington. The complaint alleged a breach of the agreement in that the appellant Frank M. Perper in concert with the other appellees had breached the agreement by developing the Washington area with Holiday Inns and by excluding the appellants from participation therein. The answer and cross-claim of the appellants Margolius and Deckelbaum admitted the allegations of the complaint and their cross-claim asserted against their co-defendants essentially the same

claim asserted in the complaint, except that in the agreement made in Richmond the appellant Margolius and appellee Frank Perper were parties of one part, contracting with appellant Weiss and his joint appellants, as parties of the other part. In addition to the Richmond agreement as a ground for relief, the cross-claim asserted that at the time of the Richmond agreement and theretofore appellant Margolius and appellee Frank Perper were partners or joint venturers in the construction and operation or leasing of Holiday Inns and also asserted as a further ground for relief that a franchise from Holiday Inns of America, Inc. for the construction and operation of a Holiday Inn on the Shirley-Glebe site was paid for by the joint venture of which the appellants and appellees, excepting Henrietta Perper and Martin Perper, were members, but the franchise was taken in the name of appellee Frank Perper, who held it as trustee for the joint venture, although he was not designated a trustee. The answer and cross-claim asserted breaches of the agreements and breaches of the trusts resulting from the facts and circumstances alleged in that appellee Frank Perper and the other appellees had developed the Washington area with Holiday Inns and had excluded the appellants Margolius and Deckelbaum from participation therein. The cross-claim also asserted that appellee Frank Perper's right to develop the Washington area with Holiday Inns had its origin in and sprang from the franchise for the Shirley-Glebe site which was paid for by the joint venture but taken in the name of appellee Frank Perper.

Facts Relating to Point 1

During the opening statement of counsel for appellants Margolius and Deckelbaum, the following occurred:

"THE COURT: And cross-claim is the same as the claim in the original complaint?

"MR. HILLAND: Yes sir — it is essentially the same — * * *, and in addition to that, Your

Honor, the evidence will show that prior to the creation of the joint enterprise upon which the plaintiffs have rested their case, the defendant Bernard Margolius and the defendant Frank Perper were engaged in a partnership which was doing a motel business elsewhere than the Washington metropolitan area. That is to say, along the Atlantic Coastline from here to Florida"
(JA 12)

On examination of appellant Margolius, the following occurred:

"Q. On direct testimony by Mr. Friedlander this morning he asked you if there was any general written partnership agreement between you and Mr. Perper and your answer was no. A. That's right.

"Q. Was there ever an oral partnership, or general partnership agreement between you and Mr. Perper? A. Beginning with the Holiday Inn in Charlotte.

"Q. Can you fix the year? A. Well, it was 1956 or 1957.

"THE COURT: Was that written, or oral?

"THE WITNESS: No, oral.

"BY MR. HILLAND: Q. What was the nature and extent of that general partnership that you entered into with Mr. Frank Perper at that time?

"MR. GALIHER: I would object to that question, Your Honor.

"THE COURT: On what grounds?

"MR. GALIHER: On the ground that it is an oral contract and therefore unenforceable.

"THE COURT: I think it is irrelevant anyway and I will sustain the objection on that ground.

"MR. HILLAND: May I say this, Your Honor?

"THE COURT: Yes?

"MR. HILLAND: . . . this witness is party to a cross-claim that is broader than the claim of plaintiffs in this case. He is party to the joint venture

agreement asserted by the plaintiffs and independently of that he has this general interest.

"THE COURT: All I had in mind was that this relates to an entirely different transaction.

"MR. HILLAND: Yes, that's right, but . . . this witness has a broader claim than that which has been asserted by the plaintiffs.

"THE COURT: Well, maybe that is so, but I didn't so understand it. I understood his claim was the same as that asserted by the plaintiffs, namely, he claims to be entitled to a share in all the Holiday Inns developed by Defendant Frank Perper in the Washington metropolitan area.

"MR. HILLAND: Yes.

"THE COURT: But this is something else.

"MR. HILLAND: But, in addition to that joint venture between the plaintiffs, there was the agreement between this witness, Mr. Margolius, and Mr. Frank Perper, Your Honor. There was this oral general partnership agreement between Mr. Margolius and Mr. Perper.

"THE COURT: Yes, but is that involved in this case?

"MR. HILLAND: I think it is, Your Honor

"THE COURT: I understand, but did you make any claim based on that other matter?

"MR. HILLAND: Yes, we did. We urge it in our answer and cross-claim and also in the pre-trial statement, pre-trial Order, I should say.

"THE COURT: Well, that's it, I want to look at the pre-trial statement and if that is so, I will allow it, but would you mind trying to locate where the matter is covered in the pre-trial statement?

"MR. HILLAND: On page 11, Your Honor, in the last paragraph.

"MR. GALIHER: Is that the pre-trial Order, or the pre-trial statement?

"MR. HILLAND: The pre-trial Order. It was in both, as a matter of fact.

"THE COURT: All right. I will allow the question. The Objection is overruled.

"BY MR. HILLAND: Q. Will you state, Mr. Margolius, what the oral general partnership was between you and Mr. Frank Perper commencing at the time that you have stated in your testimony? A. That I would have an equal interest with him in any motels that were developed.

"THE COURT: Now, when was that entered into?

"THE WITNESS: That was in the Charlotte deal, Your Honor. That was 1956 to 1957 — 1957 was the year, I think.

"BY MR. HILLAND: Q. Now, from that time until 1959, did you own any or have any interest in any Holiday Inn motel in which Frank Perper did not have an interest? A. No, sir.

"Q. From that time until 1959 did he have an interest or ownership in any Holiday Inn motel in which you did not have an interest? A. To the best of my knowledge, no.

"Q. And from the time you first went into the motel business with Mr. Perper did you have any ownership interest in any motel in which he did not have an interest also? A. No, sir.

"Q. Did he have an ownership interest in any motel in which you did not have an ownership interest during that period? A. Not to my knowledge." (JA 139-141)

On direct and cross-examination during his pretrial deposition, which was received in evidence, appellee Frank Perper was interrogated and answered as follows:

"Q. Now, from 1950 through 1957 did you go into any motel or hotel deal in which Bernie Margolius was not a partner of yours? A. No." (JA 76)

"Q. What motel, if any, did you build from 1957 to July, 1959, in which Bernard Margolius did not have a joint interest with you? A. I didn't build any then that he didn't have an interest with me." (JA 84)

In the course of redirect examination of appellant Margolius, the trial judge said: "I am going to first deter-

mine whether there was such a binding oral contract as is claimed by the plaintiffs and the two cross-claiming defendants. If I find there was not, that ends the case. . ." (JA 185)

On redirect examination of appellant Weiss, the trial judge said: "What bearing does that have on the issues? I have only one question to decide, namely, was there a binding oral agreement made in Richmond in April '59 by which all these plaintiffs and defendants became members of a joint venture. That is the only question I have to decide." (JA 219)

During the direct examination of appellant Finkelstein, the Court said: "Gentlemen, we must not depart from the issue of this case, and there is only one issue in this case, and that is was there a binding agreement made in Richmond on the 26th of April, 1959 to create this alleged joint venture, and anything else is irrelevant." (JA 252)

In the course of direct examination of appellant Deckelbaum, the following occurred:

"THE COURT: It seems to me that the starting point of this ought to be April '59. How is it relevant to introduce any statements made by Mr. Perper prior to that time?

"MR. HILLAND: Your Honor, Mr. Margolius has testified that as of the time of the Holiday Inn at Charlotte, North Carolina, Mr. Perper and he had an oral general partnership agreement under which they were to share on an equal basis in any motels that they developed, and this is corroborative of that.

"THE COURT: It is my understanding what this suit is predicated on is an alleged oral agreement made on April 26, 1959, is it not?

"MR. HILLAND: No, Your Honor, Mr. Margolius' case is predicated — it has two props. It not only has the one to which Your Honor referred, but it also. . . is based upon the oral general partnership agreement which existed between them from the time of the Holiday Inn — " (JA 270)

The Court then admitted the testimony of appellant Deckelbaum that "He (Frank Perper) would say (on occasions between 1956 and 1959) that he and Bernie, meaning Mr. Margolius, were partners, that whatever I go into Bernie goes into and whatever Bernie goes into I go into." (JA 269 and 270)

Also during direct examination of Mr. Deckelbaum, the following occurred:

"THE COURT: Mr. Hilland, you represent Mr. Margolius on his cross-claim.

"MR. HILLAND: Yes, Your Honor.

"THE COURT: Will you please state what the nature of the cross-claim is? I thought that the cross-claim was, in effect, the same as the claim of the plaintiffs. Now you said something a few minutes ago which seemed to enlarge the cross-claim.

"MR. HILLAND: I said the same thing, Your Honor, in my opening statement.

"THE COURT: You did?

"MR. HILLAND: Yes, Your Honor, I did, in my opening statement. Actually, we contended in our answer — rather, in our cross-claim, in our pre-trial statement and in my opening statement to Your Honor, in effect, that Mr. Margolius' claim has three props, if I may call it that, three bases. One is the oral general partnership agreement which Mr. Margolius testified about, which has existed since the Holiday Inn was built in Charlotte, North Carolina It was 1956. In addition to that, his claim is based upon the joint venture agreement that was reached in Richmond, Virginia, in April 1959. And it's also based upon the breach of trust of which the evidence shows Frank Perper is guilty, in that they were joint venturers for these two agreements I have stated, Your Honor, and for the further reason that the franchise for the Shirley-Glebe site was held in the name of Frank Perper, although it was paid for —

"THE COURT: Without getting into these details I want to get —

"MR. HILLAND: He held that in trust.

"THE COURT: Can you pinpoint briefly what your contention is as to the agreement or agreements between Mr. Margolius and Mr. Perper?"

"MR. HILLAND: Well, the agreement at Charlotte was that from that time forward they would continue developing Holiday Inn motels and they would have an equal interest in them as promoters.

"THE COURT: Very well. Now when do you claim such an agreement was made?"

"MR. HILLAND: In 1956.

"THE COURT: Then you have the April 26, 1959 agreement.

"MR. HILLAND: Yes, Your Honor.

"THE COURT: Now anything else?"

"MR. HILLAND: Then our case is pitched upon the breach of those two agreements and upon the breach of trusts that are involved.

"THE COURT: But that is the same thing. In other words, you claim two agreements?"

"MR. HILLAND: Yes, Your Honor.

"THE COURT: Very well. Now let me see what you said in your opening statement. You claim an agreement in Charlotte in 1956 and an agreement in Richmond on April 26, 1959?"

"MR. HILLAND: Yes, Your Honor.

"THE COURT: Very well. I may have overlooked something. I was laboring under the impression that the claim of all the parties who made claims against Mr. Perper were based on the Richmond agreement
.....

"THE COURT: Now let me look at the pretrial order.

"MR. HILLAND: — and in our pretrial statement and also in a memorandum which I filed with the Pretrial Examiner —

"THE COURT: I wouldn't be bound by that. There is a summary of the cross-claim in the pretrial order. This pretrial order is a very elaborate order and very thoroughly prepared.

"MR. HILLAND: If I remember correctly, our additional basis for claim is near the end of it.

"THE COURT: Well, you do say this: 'The contentions of defendants Margolius and Deckelbaum are essentially the same as those of the plaintiffs, and in addition thereto defendant Margolius relies on the joint enterprise that existed theretofore between him and the defendant Frank Perper, and defendants Margolius and Deckelbaum both rely on the fact that pursuant to the joint enterprise between the plaintiffs, defendant Frank Perper and defendant Margolius, the first Holiday Inn in the metropolitan Washington area, namely, the one at Glebe Road, was acquired for and on behalf of the joint enterprise in the name of Frank Perper.' You certainly don't make it clear in the pretrial order that you are claiming anything except the proportionate interests in the Holiday Inns in the Washington metropolitan area.

"MR. HILLAND: That is right; that is all we do claim.

"THE COURT: Oh.

"MR. HILLAND: Yes, Your Honor. I am not claiming in these 19 motels he just —

"THE COURT: Then how is all that relevant?

"MR. HILLAND: It's relevant because Mr. Margolius' claim has, as I indicated two props. Your Honor could find against the plaintiffs and still —

"THE COURT: Very well, with that limitation I will allow the answer. I thought you were trying to enlarge the scope of the claim." (JA 271-274)

Notwithstanding all of these times that the bases of the cross claim of appellants Margolius and Deckelbaum were called to the attention of the Court, the Court did not find the facts specially and state separately its conclusions of law thereon in respect of the grounds of the cross-claim which were in addition to the ground alleged in the plaintiffs' complaint. (JA 40-48)

There was received in evidence through Mr. Collins and the files of Holiday Inns of America, Inc. (D Ex 45-

JA 421) a letter written by appellee Frank Perper to Kemmons Wilson, addressed as "Dear Kem," Chairman of the Board of Holiday Inns of America, Inc., dated October 2 (1959), which reads in part as follows:

"I am happy to receive this letter dated Oct 1st I told the investors including Mr. Margolius that no one could have gotten this Franchise because you had told me you may want to build at some future date & you there for wanted me to have this Franchise which I agreed to accept. *Kem Mr. Margolius is not with me on a future deals* so if ever he or anyone else wants a Washington Franchise will you let me know first or give me 10 day's to decide. I want you to make me this promise as you know I have been watching for a location, but I will offer the deal to you first & if you don't except, then allow me to take it. (Will you give me your promise on this.)"

Appellee Frank Perper did not deny the testimony of appellant Margolius that beginning with the Holiday Inn in Charlotte, North Carolina in 1956, appellee Frank Perper entered into with him an oral agreement whereby he would have an equal interest with Frank Perper in any motels that were developed; nor did appellee Frank Perper deny the testimony of appellant Deckelbaum that on occasions between 1956 and 1959, appellee Frank Perper had told him that he and Mr. Margolius were partners, and that whatever he went into Mr. Margolius went into, and whatever Mr. Margolius went into he went into.

Facts Relating to Points 2 and 3

Appellant Margolius testified that he had known appellant Weiss for about eight or ten years prior to 1959; had gone to school with appellant Finkelstein; knew appellant Stolar and had seen appellant Broidie prior to 1959 but had never been introduced to him. Some time in the middle of April, 1959, he was contacted by them about the matter of promoting with them the construction and operation of Holiday Inns on a site at Shirley Highway and

Glebe Road, Arlington County, Virginia, and other sites in the Metropolitan Area of Washington. He told appellant Weiss, who was spokesman for them, that he would have to contact appellee Frank Perper, who was associated with him in the motel business and who at that time was in Miami Beach, Florida, and he did so. As a result, appellee Frank Perper, who was returning from Florida by automobile, met with all the appellants at the Holiday Inn on Brookmont Road in Richmond, Virginia, on Sunday, April 26, 1959, for the purpose of pursuing further their proposal to build and operate a Holiday Inn on that site and to build and operate other Holiday Inns in the Metropolitan Area of Washington.

On direct examination, appellant Margolius, without objection, was interrogated and answered as follows:

"BY MR. FRIEDLANDER: Q. Now, Mr. Margolius, will you tell us in substance what arrangements or agreements were made between Mr. Perper and yourself and the four plaintiffs in Richmond, Virginia at the end of April 1959? A. Yes. At this meeting which was held at that time we came to an understanding between us, that is Mr. Perper and myself —

"THE COURT: You are referring to the conference in Richmond?

"THE WITNESS: Yes, sir, we came to an understanding with Mr. Perper and myself and the plaintiffs, that we would enter into this joint venture agreement to develop the Holiday Inn motels at Shirley Highway and Glebe Road and to develop the Washington area with Holiday Inns.

"THE COURT: Would you mind repeating that answer. I want to hear it exactly.

"THE WITNESS: Yes, sir. We came to an understanding to develop the Shirley-Glebe Holiday Inn which was a special site that they had in mind when they called the meeting, and to develop the Washington area with Holiday Inns.

"BY MR. FRIEDLANDER: Q. And what were the terms, if any, that were agreed upon under which you would operate the joint venture site and also

develop the area? A. The interest as between the promotion group would be fifty-fifty between us — in other words, Mr. Perper and I would share in 25 per cent —

"THE COURT: Now, who do you call the promotion group?

"THE WITNESS: Mr. Perper, myself, and the four plaintiffs.

"THE COURT: Oh.

"THE WITNESS: We would share the interests of the promotion group, fifty-fifty — in other words, one-half of the promotion interest would go to Mr. Perper and myself and one half will go to the plaintiffs. Now, how much of each deal or any deal would end up in the promoter's hands would depend upon the deal. In other words, if we kept 60 per cent and gave the investors 40 per cent of the deal, then Mr. Perper and I would end up with 30 per cent and the plaintiffs would end up with 30 per cent. So that whatever equity or promotion interest there was, that was to be divided between the Perper group, which would be me and Mr. Perper and the plaintiffs.

"BY MR. FRIEDLANDER: Q. And by the "area" what was the understanding or agreement as to what area you were referring to? A. Washington, D.C. area and the surrounding counties.

"THE COURT: Well, now. Who were the investors? Were they unknown?

"THE WITNESS: They were unknown, yes, sir."
(JA 126-128)

Without objection, questions in the same or similar form were put to the other appellants and they answered in the same or similar form without objection and they testified substantially the same in respect of the terms and provisions of the oral agreement they alleged was made with appellee Frank Perper and appellant Margo-lius in Richmond on April 26, 1959. (JA 189-260)

Appellant Frank Perper testified that he did not enter into any agreement with the appellants and that his sole

interest was that of a "consultant, motel consultant."
(JA 316-321 and Tr. 662)

During direct examination of appellant Frank Perper, the following occurred:

"Q. Mr. Perper, was there ever any discussion on the occasion of the meetings either in Richmond, Virginia, or thereafter, between anyone who might have been affiliated with you, the plaintiffs, and any other investors, with respect to the building and development of a motel or motels other than at the site of Shirley Highway and Glebe Road, Virginia?
A. I never had any agreement with these men, and I would have to tell the story, Mr. Galiher, from the start. I have a call from Mr. Margolius —

"THE COURT: No, just a moment. You have finished answering. . . .

"MR. HILLAND: May we have the question read?

"THE COURT: Yes. (The last question was read by the Reporter.)

"MR. HILLAND: I renew my motion, Your Honor. The question was whether or not there was any discussion, and the answer was that there was no agreement.

"THE COURT: I have already overruled the objection and I have ruled that the answer is responsive." (JA 313-314 Tr. 566-568)

In his pretrial deposition, appellee Frank Perper testified:

"Q. Now, if you were a promoter in Richmond Number 1, how do you distinguish that from Shirley-Glebe motel in which case you say you were not a promoter? A. Well, it so happens that I've been giving my children, due to my age, in any motel that I build in the last few years — I give it to them. I give Martin and I give Harold. I may be the promoter, but I give it to them for that reason." (JA 84)

Appellees' exhibits as well as appellants' exhibits show that appellee Frank Perper's conduct was that of

one who entered into a contract with the appellants in Richmond on April 26, 1959, to construct and operate Holiday Inns on the Shirley-Glebe site and other sites in the Metropolitan Area of Washington, and his conduct was that of one who was a joint venturer.

Appellee Savage, who was a general partner of appellee Frank Perper in the motel business (JA 64) and a joint venturer with the appellants and appellee Frank Perper (JA 55-60 Tr. 167-169), wrote a letter dated June 6, 1959, on behalf of the joint venture, (P Ex 4 JA 371) to Mr. Kemmons Wilson, Chairman of the Board of Holiday Inns of America, Inc., in which he stated, among other things:

"Messrs. Robert Weiss and Jacob Broidie came away from their meeting with you with the understanding that the Holiday Inns of America, Inc. would hold a franchise for us for the site at the corner of Shirley Highway and Glebe Road in Arlington, Virginia. . . .

"Will you kindly confirm to us that you are holding the *franchise for this site together with the area*, except as to your company owned motel site, pending our formal application." (Emphasis supplied.)

The original franchise from Holiday Inns of America, Inc. to appellee Frank Perper for a Holiday Inn on the Shirley Highway-Glebe Road site (P Ex 1 JA 365) contained the following:

"IT IS MUTUALLY COVENANTED AND AGREED AS FOLLOWS:

"FIRST: Licensor hereby grants to the Licensee, subject to the terms and conditions hereof, a non-assignable, exclusive license to use said System in the construction and operation of one or more Holiday Inns within, and only within, the Metropolitan Area or Areas described as follows (hereinafter referred to as the 'Licensed Territory'):

"The Licensed Territory shall be only that specific site and location known as Arlington, Virginia, and Washington, D.C."

These names are in Appellee Frank Perper's own handwriting.

D Ex 47 which is a letter dated June 23, 1960, from Charles M. Collins, Senior Vice President and General Counsel of Holiday Inns of America, Inc. to appellee Frank Perper, reads in part as follows:

" It has been noted that you also wrote in on the first page of the license agreement that your Licensed Territory was Arlington, Virginia and Washington, D.C. . . . Your Licensed Territory is for the specific location only upon which the Holiday Inn is situated. You do not have either the counties or the cities of Arlington, Virginia and Washington, D.C. It was a good try, but it didn't work. . ."

Appellee Frank Perper returned the letter with a note on the bottom in his own handwriting reading as follows: "I resent the remark (it didn't work) I want you to know that I did not try to sneak or otherwise. It so happens my first letter was marked *Washington*."

D Ex 3 is a telegram from Kemmons Wilson of Holiday Inns of America, Inc. to appellee Frank Perper stating that upon receipt of application and check, franchise for a specified *Washington location* will be granted.

D Ex 39 and 40 and P Ex 20 and 21 show that appellee Frank Perper made written applications on June 13, 1959 for franchises for the Shirley-Glebe site and Winchester, Virginia and stated in the Shirley-Glebe application that the partnership would be the "same as Winchester, Va." Both applications bear the signature of appellee Frank Perper.

D Ex 41 is a letter from Holiday Inns of America, Inc. to appellee Frank Perper dated July 14, 1959 informing him that his Washington and Winchester applications had been approved.

D Ex 42 is a letter from Holiday Inns of America, Inc. to appellee Frank Perper dated September 21, 1959, about preliminary plans "from your architect, . . . for your proposed Holiday Inn to be located at Arlington, Va."

D Ex 43 is a letter from Kemmons Wilson of Holiday Inns of America, Inc. to appellee Frank Perper dated October 1, 1959, stating "that when we agreed for you to have the franchise for the location you bought on Shirley Highway that it was for that specific location."

D Ex 45 is quoted on page 10 of this brief.

D Ex 46 is a letter from Holiday Inns of America, Inc. to appellee Frank Perper dated June 13, 1960, stating ". . . two copies of the License Agreement (Shirley-Glebe site) are enclosed for your execution. . . ."

D Ex 48 is a letter from Holiday Inns of America, Inc. to appellee Frank Perper dated June 30, 1960 enclosing "the original and copy of your franchise license agreement for Arlington, Virginia. . . ."

D Ex 49 is a communication dated June 30, 1960 from "HOLIDAY INN OF ARLINGTON By Frank M. Perper" to the Holiday Inns of America, Inc. in which it was stated: ". . . that the franchise holders of the Arlington, Virginia Holiday Inn have entered into a lease agreement for the leasing of the Inn. . . and it is our desire and request that you acknowledge him as the operator-tenant. . . ."

D Ex 50 is a lease dated April 25, 1961 between Holiday Inns of America, Inc. and appellee Frank Perper and others covering a Holiday Inn sign for "Glebe Road and Shirley Highway, Arlington, Virginia." Among others, appellee Frank Perper signed the lease as lessee.

D Ex 55 is a letter from Holiday Inns of America, Inc. to The Prudential Insurance Company of America, Richmond, Virginia, dated October 31, 1960, in which it is stated:

"Mr. Frank M. Perper has contacted our office and requested that we write you and state in further detail the position of your company in the event our license agreement with him should become in default. I have been authorized to write you and state that while The Prudential Insurance Company of America's first mortgage is in effect upon the Holi-

day Inn being built by Mr. Perper at Arlington, Virginia,"

D Ex 56 is a lease between Holiday Inns of America, Inc. and Frank Perper, dated June 22, 1960, covering a Holiday Inn sign for "Glebe Road and Shirley Highway, Arlington, Va." signed by Frank M. Perper "lessee."

D Ex 59 is a rewriting dated April 25, 1960, in the names of appellee Frank Perper and others of the franchise agreement dated January 5, 1960 from Holiday Inns of America, Inc. to Frank Perper. Both agreements bear appellee Frank Perper's signature.

P Exs 7, 8 and 9 are early drafts of the joint venture agreement among the promoter group and investor group covering the Holiday Inn on the Shirley-Glebe site showing that in these early drafts appellee Frank Perper was included among the joint venturers but his given name and middle initial were stricken out and the given name of the appellee Harold Perper was substituted.

P Ex 11 is an undated memorandum from the desk of appellee Frank Perper, in his handwriting, addressed "To Jerry" in which appellee Frank Perper stated:

"We decided to sell Holiday Inn on the Shirley Hy. Washington, D.C. This is a 'steel.' Jerry let me say on this deal, I have only 10% but I have the right to sell this. . . . Jerry we have a \$500,000 first mortgage. The motel has plans for another 54 units. After 6 months we are to show Prud. a statement and we expect to get another \$250,000 mortgage if we add the 54 units which I know you can use right now. I am not interested in a lease back as I have only 10% interest and I am not going to spend my time for that. I usual have around 25 to 35%. . . FRANK"

P Ex 14 is an agreement dated June 1, 1960, which shows the respective interests of the parties involved exactly as the appellants testified they were agreed upon in Richmond. This agreement shows that appellant Weiss and his associates, appellants Stolar, Finkelstein and

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P Ex 14 is an agreement dated June 1, 1960, which shows the respective interests of the parties involved exactly as the appellants testified they were agreed upon in Richmond. This agreement shows that appellant Weiss and his associates, appellants Stolar, Finkelstein and

Broidie had percentage interests totaling 50 per cent and that appellant Margolius and appellee Frank Perper and their associates or nominees, consisting of appellees Savage, Sahm and Harold Perper and appellants Margolius and Deckelbaum, also had percentage interests totaling 50 per cent.

P Ex 18 is a letter dated October 3, 1962, from appellee Frank Perper's lawyers to the tenant of the Holiday Inn on the Shirley-Glebe site, in which it is stated:

"We represent Mr. Frank M. Perper, the managing venturer of Shirley-Glebe motel joint venture, which owns the Holiday Inn motel (and related personal property) at Shirley Highway and Glebe Road in Arlington, Virginia, and leases the same to you as lessee."

The letter then asserts a claim against the tenant, based on information furnished by Mr. Perper, and contains this paragraph

"Mr. Perper has therefore asked us to make demand on you for payment, within seven days, of the \$8,700 owed by you to Shirley-Glebe Motel Joint Venture in respect of your aforesaid sale of the linens. He has also indicated that, unless such payment is thus received, the Joint Venture will be forced to bring suit to enforce its rights to the \$8,700."

Appellee Margolius testified that he was excluded from participation in the promotion of the other Holiday Inns in the Washington Metropolitan Area; that when he asked to participate, that included whatever was necessary to be done in the venture; that if he were accorded a share in those enterprises at this time, he would expect whatever was put up by the Perper interests would have to be matched; that he was ready, willing and able to perform whatever was necessary; that the reason he did not file his answer and cross-claim until November 15, 1963, a year after the plaintiffs filed the action on October 2, 1962, was that "I am a member of the bar of this Court and I am

very sensitive to this and I just didn't feel like I wanted to and it took me a year to make up my mind. That is why I waited a year." (JA 186-187 and 189)

Appellee Savage, who did not testify at the trial but whose pretrial deposition was received in evidence, admitted that after appellant Margolius learned about the Holiday Inn at Winchester, Virginia, Mr. Margolius called him on the telephone and asked him whether he was "in Winchester, and I told him I didn't know." (Savage Dep. 181)

P Ex 5 (JA 372) is a letter dated January 9, 1962, from appellant Margolius to appellee Frank Perper, which was written after he discovered in his files the Savage letter hereinbefore quoted in part on page 14. Appellant Margolius' letter, written four months after appellee Frank Perper's breach of contract, asserted his claim against appellee Frank Perper. (JA 136-137). On prior occasions, appellant Margolius had conversations with appellee Frank Perper in which he told him he was of the opinion that he had an interest in the development of the Metropolitan Area of Washington along with him, but at that time he was brushed off and frequently at those particular times Mr. Perper was not talking to him and anything he would say to him would receive no reply (JA 133-134). Appellant Margolius also testified that he never received a reply to his letter. Appellee Frank Perper admitted that from the time appellant Margolius' letter reached his office in January, 1962, to the time of his testimony, he did nothing about the letter. (JA 348-349)

On three occasions during the testimony of appellant Margolius, the Court asked him and he answered that in each and all of the motels promoted by him and appellee Frank Perper there was a separate written contract (JA 122, 145, 146-147). Appellant Deckelbaum was interrogated about this and answered as follows:

"Q. Mr. Deckelbaum, will you state the reason for the separate agreement for each motel? A. Yes, sir. When the site is determined by the promoters they at that time do not know how much capital is going to be needed, how many investors are going to be taken in, what the percentage of interest of the promoting group as opposed to the investor group is, and it is not until considerable work is done that this is known. In other words, you must obtain cost of construction, the plans, and so forth. After this is done, you then go and obtain investors. At this time you have outside parties, people who are not involved with you, who are investing money, and it is when you get this invested capital — these people put their money up, they want a written agreement for it; and it is at this stage that these agreements are prepared. It is several months after the promoters' initial steps toward the fruition of a Holiday Inn motel. In addition to that each and every motel has different costs, different amount of investors, and different projections involved. The return is different. Therefore, after the initial establishment or decision to go forward is made it is usually anywhere from three to six months before all the investors are obtained and a final agreement is arrived at. Furthermore, each joint venture group, investor group, usually has some people in there who retain their own counsel, who like to go over the venture agreement, make certain additions or corrections and so forth, and therefore an individual agreement is drawn up with each group after the parties, the investor parties are determined and the deal or the project is pretty well fixed as to what they are going to get for what they put into it.

"Q. Are the parties the same in all of these joint venture agreements relating to each motel? A. No, sir.

"Q. Are the promoters the same? Do you have the same group of promoters in each case? A. Generally, speaking for our office, for example, they are generally the same, but there may be some little variation, one or two people may change.

"Q. How about the investors, do they vary? A. They vary considerably because these people who

invest cannot invest in each and every motel that a promoter puts up. You have some people who go into — a few people who may go into every one you establish, and then you have people who go into one out of three or just one out of ten. They have to have capital available to put into it." (JA 288-289) His testimony was uncontradicted.

Facts Relating to Point 4

The uncontradicted evidence showed that the purchase price of the franchise for the Holiday Inn on the Shirley-Glebe site was paid by the joint venture but the franchise was taken in the name of appellee Frank Perper.

The deposition of William Jeffreys Mann, Assistant Vice President in charge of franchise sales for Holiday Inns of America, Inc. was received in evidence. He testified that the Holiday Inn on the Shirley-Glebe site was the first Holiday Inn that was granted a franchise in the Washington area (JA 96); that in the case of a franchise to a syndicate, he had one man who was responsible to Holiday Inns of America, Inc. because it is impossible for them to have all of the financial statements for every participant in the syndicate and they have always made it a practice to work with one man in the syndicate and it is his responsibility to keep his group in line and that the main thing they want to do is to have one man to whom they can go rather than dealing with many people (JA 97-98). He was asked whether Holiday Inns of America, Inc., as of August 17, 1961, had any understanding of any kind or nature with appellee Frank Perper as to the development of future Holiday Inns in Washington, D.C. and he said he thought morally they always have an understanding in any city; that he thought they owed it to a man who has a large investment in one location, not to go into competition with him; that as of August 17, 1961, the Holiday Inn on the Shirley-Glebe site was the one Holiday Inn in the Washington area. (JA 101) He was further interrogated and answered as follows:

"Q. Whatever obligation Holiday Inns of America, Incorporated, feels to the holder of a franchise in a particular area springs from the first franchise issued, doesn't it? A. True; possibly.

"Q. Why do you say, 'possibly'? A. In the case of Louisville, Kentucky, this was not true.

"Q. How about the Washington metropolitan area? A. I would say yes it would; yes, sir."
(JA 101-102)

P Ex 15 (JA 399) shows that on March 9, 1961, Mr. Mann stated in a letter "... we are committed for the Washington area," and Plaintiffs' Exhibit 16 (JA 400) shows that on August 17, 1961, he stated in another letter "... we do have an understanding with Mr. Frank Perper as to the development of future Holiday Inns in Washington, D.C."

Appellee Frank Perper was interrogated and testified in his deposition as follows:

"Q. So, coming down to cases, when you got the franchise for the Holiday Inn at Shirley Highway and Glebe Road, you also obtained a protection sort of or protective arrangement? A. Yes; somewhat." (JA 69, Dep. 208)

Appellee Savage was interrogated and testified in his deposition as follows:

"Q. When Mr. Friedlander was examining you, you referred to Mr. Frank Perper's right to protect his franchise

"THE WITNESS: I think that's inherent in the franchise agreement

"Q. What franchise agreement? A. The franchise agreement for this site.

"Q. Shirley-Glebe? A. Yes, sir." (JA 63)

During cross-examination of appellee Frank Perper, the following occurred:

"THE COURT: I first have to decide whether there was a joint venture agreement for the entire

Washington area. If I decide there was not, that ends the case. If I decide there was, then we will resume the trial and then determine which motels it applies to.

"MR. HILLAND: Your Honor, we are going to contend, as I have tried to indicate before, we are going to contend that the right to develop the Washington area sprang from the first franchise, which was Shirley-Glebe.

"THE COURT: Exactly.

"MR. HILLAND: Sir?

"THE COURT: Yes, that is right." (JA 344)

STATEMENT OF POINTS

1. As to the additional claim asserted by the defendant Margolius in the cross-claim (in addition to the claim asserted by the plaintiffs in which the defendants Margolius and Deckelbaum joined and asserted in the cross-claim too), the District Court did not find the facts specially and did not state separately its conclusions of law thereon.

2. As to the claim asserted by the plaintiffs (in which the defendants Margolius and Deckelbaum joined and asserted in their cross-claim) the District Court's findings of fact are clearly erroneous.

3. The District Court erred in ruling that testimony of the plaintiffs and defendants Margolius and Deckelbaum who were asked and stated without objection their conclusions as to the terms and provisions of their oral agreement with the defendant Frank Perper in Richmond, Virginia, in April 1959, was entitled to lesser weight than their testimony would have been entitled to if they had narrated their conversation with him which led to the agreement and to lesser weight than testimony of the defendant Frank Perper also stated in the form of a conclusion.

4. The Court erred (a) in failing to find that the defendant Frank Perper breached, and personally profited by

breach of, his trusts and (b) in failing to rule that, therefore, his profits should be impressed with a trust even though the Court found there was no agreement to develop the Washington area with Holiday Inn Motels.

SUMMARY OF ARGUMENT

1. A mere reading of the facts relating to Point 1 and the opinion of the Court sustains the contention that the Court decided only one issue and left the two remaining issues undecided.

This Court has decided that the ultimate test as to the adequacy of findings will always be whether they are sufficiently comprehensive and pertinent to the issues to provide a basis for decision and whether they are supported by the evidence. This Court has also ruled that it is reversible error for Courts and quasi-judicial bodies to fail in their duty to make findings of fact.

2. The findings of fact as to the only issue decided are clearly erroneous. While FRCP 52(a) provides that this Court shall give due regard to the opportunity of the trial court to judge of the credibility of witnesses, this Court has about the same opportunity in that regard because much of the evidence was admitted in the form of pretrial depositions and documents.

A reading of the exhibits quoted or summarized in the factual portions of this brief will convince the Court that appellee Frank Perper did not tell the truth in his pretrial deposition or at the trial.

The crushing weight of the documentary evidence, which includes admissions by appellee Frank Perper, his partner and his lawyers, shows that his conduct has been that of one who entered into an oral joint venture agreement in Richmond and whose conduct has been that of a member of the joint venture.

3. Where, without objection and with some participation by the trial judge in the interrogation, witnesses are asked

to state and do state their conclusions as to the terms and provisions of an oral agreement, their testimony is competent and entitled to as much weight as their testimony would have been if they had been asked to narrate and had narrated the conversation which led to the agreement.

Failure of the trial court to rule, until after the close of all the evidence, that the testimony was incompetent and entitled to lesser weight than it would have been entitled to if the witnesses had been asked to narrate and had narrated the conversation which led to the agreement, amounted to denial of a fair trial, particularly in view of the fact that there had been some participation by the trial judge in the interrogation.

The witnesses' statements were not conclusions but were summaries of what the parties had agreed upon when they entered into the oral joint venture agreement in Richmond.

If the witnesses' statements were conclusions and incompetent, they should have been challenged by appropriate objections and cross-examination.

The question presented is not whether the testimony was admissible but is whether the testimony, after admission without objection and with the implied approval of the Court, is entitled to credit.

4. The appellee Frank Perper was guilty of breach of trusts as well as breach of two agreements. He was a partner or joint venturer with appellant Margolius and a confidential relationship existed between them which required the utmost good faith and fairness on the part of each of them and neither had the right to appropriate to his own use and benefit any right or benefit which ought to inure to the joint venture or partnership. Appellant Margolius demonstrated his awareness of this mutual trust and reciprocal duty and obligation. Appellee Frank Perper did not.

Even if the Court correctly found that there was no

oral joint venture agreement made in Richmond and even if the Court had further found that there was no prior oral joint venture agreement between appellee Frank Perper and appellant Margolius, appellee Frank Perper nevertheless stood in a confidential relationship to the members of the joint venture that built the Holiday Inn on the Shirley-Glebe site. The franchise for the Holiday Inn on that site was paid for by the joint venture but the franchise was taken in the name of appellee Frank Perper. Holiday Inns of America, Inc. accorded to appellee Frank Perper the right or privilege to construct and operate other Holiday Inns in the Metropolitan area of Washington because he was the first franchise holder in the area; namely, the holder of the franchise for the Shirley-Glebe site. Under these facts and circumstances shown by the undisputed evidence, appellee Frank Perper, by operation of law, held that right or privilege in trust for the use and benefit of the joint venture. Appropriation of it to his own use and benefit constituted a breach of trust. Other appellees joined and participated in the breach of trust when they, having been members of the joint venture that built the Holiday Inn on the Shirley-Glebe site, became joint venturers with appellee Frank Perper in developing the Washington area with other Holiday Inns.

This and other courts have stated in detail the well-defined fiduciary duties and obligations which arise in the relationship of joint venturers.

ARGUMENT

Point 1

The "Facts Relating to Point 1" show that counsel repeatedly urged upon the Court that there was more involved than the issue over the agreement made in Richmond on April 26, 1959; that there was also involved the additional issues raised by the cross-claim; that is to say, the issue over the agreement made in Charlotte in 1956, and the breach of trust issue; and that these issues

were involved even if the Court found no agreement was made in Richmond.

The Court's opinion did not even mention the grounds of the cross-claim, but ignored them just as the Court seemed disposed to do on many occasions during the trial, notwithstanding the many occasions counsel called the Court's attention to the additional grounds for relief asserted in the cross-claim.

It is clear from a reading of the Court's opinion that the Court decided only one issue and left the two remaining issues undecided. This is so clear that no argument is needed to sustain the contention. A mere reading of the facts relating to point 1 and the opinion of the Court sustains the contention.

FINDINGS BY THE COURT

"(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the Court shall find the facts specially and state separately its conclusions of law thereon, If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. . . ." FRCP 52.

"(3-6) . . . The ultimate test as to the adequacy of findings will always be whether they are sufficiently comprehensive and pertinent to the issues to provide a basis for decision, (citing in footnote 7 many prior decisions of this Court) and whether they are supported by the evidence. (Citing prior decisions of this Court and the Supreme Court in footnote 8.)" *Schilling v. Schwitzer-Cummins Co.*, 79 U.S.App.D.C. 20, 142 F.2d 84.

These are the two questions about the findings that are involved. In connection with the point under discussion, the question is whether the findings are sufficiently comprehensive and pertinent to the issues to provide a basis for decision, and under Point 2 relied on by these appellants, the question is whether the findings are supported by the evidence.

"... It is not the duty of the Court to make findings for the Commission and when the Commission has failed in its duty to make such findings, it is impossible for the Court to review its conclusion. This too we regard as reversible error." *Saginaw Broadcasting Co. v. Federal Communications Commission*, 68 App.D.C. 282, 96 F.2d 554.

"(3) ... In *Saginaw Broadcasting Company v. Federal Communications Commission*, 1938, 68 App. D.C. 282, 96 F.2d 554, we pointed out that the requirement that both Commissions, acting in quasi-judicial capacity, and courts shall make findings of fact is far from a technicality. We said that:

'... When a decision is accompanied by findings of fact, the reviewing court can decide whether the decision reached by the Court or Commission follows as a matter of law from the facts stated as its basis, and also whether the facts so stated have any substantial support in the evidence. In the absence of findings of fact the reviewing tribunal can determine neither of these things. ... (68 App. D.C. at page 287, 96 F.2d at page 559)

"It was accordingly the duty of the trial court in the instant case to make findings of fact on the issues described above. It is not our duty to make findings, and we could not soundly do so — not having heard the witnesses." *Campbell v. Campbell*, 83 U.S.App.D.C. 237, 170 F.2d 809.

Point 2

Counsel is well aware of the heavy burden involved in a contention that findings of fact are "clearly erroneous". One reason for counsel's decision to undertake this heavy burden is the further provision of FRCP 52(a) that "due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses."

In this case, this Court has about the same opportunity that the trial court had to judge of the credibility of the only witness; namely, appellee Frank Perper, who testified that he made no agreement with the appellants in

Richmond, because the principal part of his direct examination at the trial consisted of the appellees' adoption of his testimony in his pretrial deposition. In the reading of his deposition and documentary evidence, this Court has the same opportunity that the trial court had to judge of his credibility. Counsel submits that a reading of the facts of his deposition and documentary evidence, as related in the several factual parts of this brief, ought to convince the Court that appellee Frank Perper was not a credible witness and certainly that his testimony alone did not balance the oral and documentary evidence that impeached his testimony. Even his own testimony impeached parts of his testimony.

Examination of the factual portions of this brief relating the false testimony of appellee Frank Perper will lead to conviction that the trial judge was being charitable when he said that he "was impressed with the fact that apparently Mr. Perper has a poor memory for details. In fact, in several instances on different occasions he put different interpretations on the same incident. While the Court has no doubt he was trying to tell the truth as he best remembered it, the Court felt, as just said, that his memory for minor details was not good and that he apparently, so to speak, is apt to paint with a broad brush." The fact is that he paints with a bad brush. He does not tell the truth.

In the early part of his pretrial deposition, appellee Frank Perper testified that he first learned of the Savage letter of June 6, 1959, in August 1959 — two months later. (JA 78-79) Some two hundred pages later in his same deposition, he testified that he "didn't know anything about that letter until recently . . . when we were in Mr. Galisher's office" — more than three years later. (JA 85)

Appellee Frank Perper testified in his pretrial deposition that he did not apply in writing for the franchise for the Shirley-Glebe site but applied orally to Jack Ladd by telephone; that no change was made as to the location cov-

ered by the Holiday Inn franchise for that site; that he did not know whether anybody made any change and that he had nothing to do with any change in the area covered by the franchise. (JA 79-80) The testimony of William Jeffreys Mann, Assistant Vice President of Holiday Inns of America, Inc., in charge of franchise sales, shows that appellee Frank Perper was in Mr. Mann's office when Mr. Mann filled out the written application papers for Mr. Perper on June 13, 1959; that appellee Frank Perper made the written application for the Shirley-Glebe site and for one for Winchester, Virginia, at the same time and place. (JA 89) The testimony of Charles Collins, Senior Vice President and General Counsel of Holiday Inns of America, Inc. (JA 290, 295-302) and Plaintiffs' Exhibits 1, 20 and 21, and Defendants' Exhibits 39, 40, 41, 46, 47, 48 and 49 show that appellee Frank Perper's testimony in his deposition that no change was made as to the area covered by the Holiday Inn franchise for the Shirley-Glebe site and that he did not know whether anybody made any change and that he had nothing to do with any change in the area covered by the franchise, was false. (JA 365, 403-405, 417, 425-427) After the truth was disclosed by Mr. Mann and Mr. Collins, appellee Frank Perper admitted that he initialed the change in the franchise and that he was present when William Walton initialed it. (JA 350)

In his pretrial deposition, appellee Frank Perper testified that he had not written a letter saying he wanted to sell the motel on Shirley Highway and had not stated that he had a ten per cent interest, and he testified "I never had an interest." (JA 214) At the trial, Plaintiffs' Exhibit 11 showed that *in his own handwriting* he had written a letter offering to sell the motel and stating that he had a ten per cent interest in it. The letter is quoted in part on page __ of this brief.

A mere reading of the exhibits quoted or summarized in the factual portions of this brief will convince the Court that appellee Frank Perper did not tell the truth in his

pretrial deposition or at the trial. The crucial and pertinent facts were those showing his consciousness of the fact that in Richmond on April 26, 1959 he had made an oral joint venture agreement with the appellants not only to construct and operate or lease a Holiday Inn motel on the Shirley-Glebe site but also on the other sites in the Washington area. He would not admit that he had knowledge at the time of the letter written by his partner in the motel business and joint venturer, appellee Julian Savage, on June 6, 1959, which clearly tended to confirm the fact that the scope of the oral agreement made in Richmond was the Washington area. He did not admit that it was he who, in his own handwriting, had written into the original franchise the description of the territory involved; namely, "Arlington, Virginia, and Washington, D. C." It did not come to light until the trial, when Defendants' Exhibit 47 was received in evidence, that an official of Holiday Inns of America, Inc. had accused him of making "a good try, but it didn't work" - "to sneak in" the territory of "Arlington, Virginia and Washington, D. C." These and other examples of his conduct shown by the undisputed evidence prove his consciousness that the oral agreement made in Richmond covered not only the Shirley-Glebe site but also the Washington area. The note in his own handwriting on that exhibit states that his "first letter was marked Washington".

In view of the documentary evidence just referred to and other documentary evidence quoted or summarized in the factual portions of this brief, it is clear that the trial court's finding "that there is not a scrap of paper that has been produced showing that such a contract or agreement existed as between the parties to this lawsuit" is clearly erroneous.

The crushing weight of the documentary evidence referred to, which includes admissions by appellee Frank Perper, his partner and his lawyers, shows that his conduct has been that of one who entered into the oral joint venture agreement in Richmond and whose conduct has

been that of a member of the joint venture. Certainly, such documentary evidence outweighs appellee Frank Perper's denial of the agreement and denial that he was a joint venturer.

The testimony of the appellants, six in number, was not impeached in any instance. Their testimony as to the terms and provisions of the oral agreement made in Richmond is clear and definite. Counsel respectfully submits that their unimpeached testimony clearly outweighs the testimony of appellee Frank Perper, who was impeached by his own testimony, his partner and lawyers and the testimony and records of officers of Holiday Inns of America, Inc., and by documentary evidence as well as by the testimony of the six appellants.

The Court stated that "It is further *claimed* that, in addition, there was an oral agreement between the parties whereby it was agreed that *after* the Holiday Inn in Arlington would be underway, joint efforts should be made to develop other Holiday Inns at locations within the Washington metropolitan area. This suit is brought on the last-mentioned contract." No witness testified that more than one contract was made in Richmond. No party claimed it was agreed that *after* the Holiday Inn at Arlington would be underway, joint efforts should be made to develop other Holiday Inns at locations within the Washington metropolitan area. No such claim can be found in the pleadings, pretrial statements, pretrial order, in the opening statements or in the evidence. Appellant Finkelstein testified that he looked at other sites in the Washington area, including the one near Catholic University, and appellant Margolius testified to a number of sites in the Washington area that he and appellee Frank Perper had looked at and considered.

No witness testified directly or to facts and circumstances from which it could be inferred that "there was some discussion of the possibility or likelihood of being able to develop additional Holiday Inns in the Washington

metropolitan area if the first project, the Arlington site, successfully got underway." Or that there had "been an inchoate plan or an idea that the parties were hoping to develop in the future." Or that "there was a discussion of the possibility of developing additional Holiday Inns in the Washington metropolitan area if the project for Arlington got underway successfully" or that "these conversations did not reach beyond the inchoate stage and were merely conversations concerning future possibilities and future plans."

The Court's findings concerning the existence of a formal contract creating the joint venture to build the Holiday Inn in Arlington and "an individual written contract" whenever appellant Margolius entered into a project with appellee Frank Perper are clearly erroneous. As pointed out in the factual portion of this brief, page 19, the trial judge asked the appellant Margolius on three occasions during his testimony and Mr. Margolius testified that in each and all motels promoted by him and appellee Frank Perper there was a separate written contract.

These answers of appellant Margolius were clearly and fully explained by the testimony of appellant Deckelbaum appearing on page 20 of the factual portions of this brief. His testimony showed that the individual written contracts referred to by Mr. Margolius were not between him and the appellee Frank Perper as promoters. They were, as explained by appellant Deckelbaum's testimony, individual written contracts between the promoters and investors. This is proved beyond all doubt by Plaintiffs' Exhibit 10, relating to the Shirley-Glebe Holiday Inn and referred to in the Court's findings. That agreement was not between appellant Margolius and appellee Frank Perper, but was between the promoters (exclusive of appellee Frank Perper, because appellee Harold Perper was substituted for him as shown by Plaintiffs' Exhibits 7, 8 and 9) and investors. These exhibits of the plaintiffs, 7 to 10, both inclusive, are corroborative of appellant Deckelbaum's testimony. So is Plaintiffs' Exhibit 28. Except for the Court's

misinterpretation of appellant Margolius' testimony, there is not a scintilla of evidence that there was ever "an individual written contract" between the promoters of any Holiday Inn motel. Appellee Savage testified that he is a partner of appellee Frank Perper in the motel business but has no written contract with him (Savage Dep. 179). The colloquy between the Court and appellant Margolius, as the witness, and his counsel (JA 182-185), shows the Court's misunderstanding of the facts about the joint venture agreement between the promoter group and investor group. The Court's interrogations of appellant Margolius (JA 122, 145, 146-147) were the "handwriting on the wall" of what was to come but counsel rested secure in the belief that the colloquy referred to above (JA 182-185) and the testimony of appellant Deckelbaum had fully explained the facts of the individual agreements and made it clear that they were not between the promoters but were between the promoters and investors. Unfortunately, these explanations did not take root and the result was clearly erroneous findings in respect thereof.

The Court's interpretation of appellant Margolius' letter of January 9, 1962, to appellee Frank Perper that it was an "expression of a grievance or disappointment that the defendant Perper did not invite the writer to participate in the enterprise, rather than a protest or an assertion of a contract right. . . . this letter is subject to the interpretation that it was not an assertion of a legal right" is clearly erroneous as a mere reading of the letter will disclose. The letter asserted the claim and enclosed proof thereof. (P. Ex. 5 - JA 372)

Point 3

The first suggestion of criticism by the Court of the form of the questions to and answers of Mr. Margolius and the four plaintiffs, came after the plaintiffs had closed their case and defendant Frank Perper was on the witness stand. (Tr. 566) Even at that late time in the trial, which was six days after Mr. Margolius had testified, there was

no suggestion by the Court that their testimony was incompetent or entitled to lesser weight because he thought the questions called for the conclusions of the witnesses and the answers were in the form of conclusions. At that late time in the trial, there was no opportunity for the plaintiffs to correct the defect, if it was a defect, in their testimony, because the plaintiffs had rested their case and the defendants were introducing their evidence, and there was no reason to request leave to re-open the plaintiffs' case because at that time there was no suggestion by the Court that the testimony was incompetent or entitled to lesser weight in its form. Those rulings did not come until the Court rendered the opinion at the close of all the evidence and arguments.

In view of the absence of objection to the form of the questions and to the form of the answers, and also in view of the Court's participation in the interrogation, as shown on page 11 of this brief, counsel submits that what happened amounted to denial of a fair trial. Certainly, when the Court asked Mr. Margolius to repeat his answer, which may have been in the form of a conclusion, to a question which may have called for his conclusion, because, as the Court said, he wanted to hear it "exactly", the appellants had reason to conclude that the form of the question and the form of the answer met with the Court's approval. In fact, a question and answer in that form were expressly approved by the Court during the testimony of appellee Frank Perper. (JA 313-314)

These appellants do not concede that the interrogation called for the conclusions of Mr. Margolius and the plaintiffs or that their answers were conclusions and not facts or that their testimony was incompetent or not entitled to full credit.

"... The difference between so-called 'fact', then, and 'opinion', is no difference between opposites or contrasting absolutes, but a mere difference in degree with no recognizable line to mark the boundary." McCormick on Evidence, p. 22.

In proving an oral contract, the clearest and most definite way of establishing it is by the witness's summary of what was agreed upon. Written agreements contain the ultimate facts of the conversations and negotiations preceding the agreement. Why shouldn't proof of oral contracts contain the same? Most people do not remember the details of conversations and when testifying about them necessarily are in a large measure summarizing their version of the ultimate facts. VII Wigmore on Evidence, § 1969, pages 109-110

If the witness's statement of the terms and provisions of an oral agreement is to be challenged, it should be challenged by appropriate objections and cross-examination.

"In the first place, then, there is no principle and no orthodox practice which requires a witness having personal observation to state in advance his observed data before he states his inferences from them; all that needs to appear in advance is that he had an *opportunity to observe* and *did observe*, whereupon it is proper for him to state his conclusions, leaving the detailed grounds to be drawn out on cross-examination (*ante*, § 655). Any other rule cumbrous seriously the examination, and amounts in effect to changing substantially the whole examination into a '*voir dire*,' — an innovation on established methods which is unwarranted by policy." VII Wigmore on Evidence § 1922, page 20.

In the absence of objection, and of cross-examination as to the conversation upon which the witness's summary is based, the testimony remains unchallenged and is entitled to credit just as much as a detailed narration of the conversation upon which it is based would be, assuming the statement is by a credible witness.

". . . . the law takes no more special account of a logical difference between 'opinion'-testimony and 'fact'-testimony than between testimony by a short witness and testimony by a tall witness." VII Wigmore on Evidence §1918, page 14.

The question presented is not whether the testimony

was admissible. Rather, the question is whether the testimony, after admission without objection and with the approval of the Court, was competent and is entitled to credit. Counsel submits that it was. Even if it were entitled to lesser weight in its form, the testimony of Mr. Margolius and the four plaintiffs outweighed the testimony of appellee Frank Perper, who was proved to be an incredible witness, and whose testimony as to the agreement was in the form of a conclusion, too.

Point 4

Under the facts relating to points 1 and 4 we have shown that counsel for appellants Margolius and Deckelbaum contended on more than one occasion shown by the record (and counsel also contended in his closing argument which has not been included in the transcript of record) that the appellee Frank Perper was guilty of breach of trusts as well as breach of two agreements.

One of the breaches of trust results from the fact that appellee Frank Perper was a partner or joint venturer with appellant Margolius under their oral joint venture agreement made in Charlotte, North Carolina, in 1956. A confidential relationship existed between them which required the utmost good faith and fairness on the part of each of them and neither had the right to appropriate to his own use and benefit any right or benefit which ought to inure to the joint venture or partnership. If either of them did misappropriate to his own use and benefit any right or benefit which ought to inure to them jointly, the other is entitled to a judgment declaring that the former holds the misappropriated right or benefit as trustee for the joint venture or partnership. Appellant Margolius demonstrated his awareness of this mutual trust and reciprocal duty and obligation when he communicated with appellee Frank Perper in Miami Beach, Florida, after appellant Weiss and his associates contacted him in mid-April, 1959.

The other trust involved exists even if the Court correctly found that there was no agreement made in Richmond and would have existed even if the Court had further found that there was no agreement made in Charlotte. This trust was created and arose from the facts that the Holiday Inn franchise was paid for by the joint venture but the franchise was taken in the name of appellee Frank Perper. He was not designated a trustee, but nevertheless a trust arose by operation of law under those facts and circumstances.

"... The rule is well established that when the purchase money is paid by one and the property is taken in the name of another, a resulting trust arises in favor of the party paying. (Citing the Supreme Court and other authorities in footnote 9) ..."
Kosters v. Hoover, 66 App. D.C. 66, 69, 98 F.2d 595

When appellee Frank Perper permitted the franchise to be taken in his name, he was taken by operation of law out of competition in any manner with the joint venture or any member thereof. This trust would have arisen from the mere facts that the joint venture paid for the franchise and took the franchise in the name of appellee Frank Perper even if these had been the only facts shown by the evidence. But in this case, the evidence shows more than these facts. The evidence shows that Holiday Inns of America, Inc. accorded to appellee Frank Perper the right or privilege to construct and operate other Holiday Inns in the Metropolitan Area of Washington because he was the first franchise holder in the area; namely, the holder of the franchise for the Shirley-Glebe site. Under these facts and circumstances shown by the undisputed evidence, appellee Frank Perper, by operation of law, held the right or privilege in trust for the use and benefit of the joint venture. Appropriation of it to his own use and benefit constituted a breach of trust by appellee Frank Perper in which breach of trust the appellees Julian Savage and Alan Sahm (who became members of the joint venture with the appellants) joined and partici-

pated when they became joint venturers with appellee Frank Perper in developing the Washington Area with other Holiday Inns.

In *Libby v. L. J. Corporation*, 101 U.S. App. D.C. 87, 247 F.2d 78, this Court stated in detail the well-defined fiduciary duties and obligation which arise in the relationship of joint venturers, pointing out that the duty imposed is essentially one of good faith, fair and open dealing and the utmost of candor and disclosure to all concerned; that the obligation begins with the opening of the negotiations for the formation of the syndicate, applies to every phase of the business which is undertaken, and continues until the enterprise has been completely wound up and terminated; that the fiduciary relationship precludes one member of the venture from purchasing or otherwise dealing with the property involved in the venture without full disclosure to his associates; that no member of the joint venture could consummate the plan to the exclusion of the others without an honest disclosure of all of the facts and an opportunity for the others to reap their end of the bargain, and that where one of the members acts as manager of the venture the necessity for full disclosure becomes more acute and rests more heavily on him. See also *Helms v. Duckworth*, 101 U.S. App. D.C. 390, 394, 249 F.2d 482.

"(2) Joint adventurers, like co-partners, owe to one another, while the enterprise continues, the duty of the finest loyalty. Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the marketplace. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of Courts of Equity when petitioned to undermine the rule of undivided loyalty by the 'disintegrating erosion' of particular exceptions. *Wendt v. Fischer* 243 NY 439, 444, 154 NE 303. Only thus has the level of conduct for fiduciaries been kept at a level

higher than that trodden by the crowd. It will not consciously be lowered by any judgment of this Court." *Meinhard v. Salmon*, 249 NY 458, 164 NE 545.

In that case, Salmon, to the eye of an observer, held a lease as owner in his own right, for himself and no one else, just as appellee Frank Perper, to the eye of an observer, held the franchise for the Shirley-Glebe site as owner in his own right, for himself and no one else. In fact, Salmon held it as a fiduciary, for himself and another, sharers in a common venture, just as appellee Frank Perper held the franchise as a fiduciary, for himself and others, including the appellants, sharers in a common venture. In speaking about Salmon's conduct, Judge Cardozo said:

"... The trouble about his conduct is that he excluded his coadventurer from any chance to compete, from any chance to enjoy the opportunity for benefit that had come to him alone by virtue of his agency. This chance, if nothing more, he was under a duty to concede. The price of its denial is an extension of the trust at the option and for the benefit of the one whom he excluded."

"(2) ... Notwithstanding that the joint venture agreement related only to the Hill Field job, the Utah firm had been brought into existence, and had acquired certain intangible assets consisting of business reputation, standing and credit. ... The Sunnyvale job was essentially a business opportunity which was offered to the Utah firm within the field where the parties expected the firm to operate. The opportunity belonged to the firm. ...

"(3) The facts bring the case within the stated rule. While it has been applied so generally in corporation cases as to have become known as the doctrine of corporate opportunity, it is founded in the doctrine of loyalty in business which applies in all situations in which trust is reposed. Cf. *Meinhard v. Salmon*, 249 NY 458, 164 NE 545, 62 A.L.R. 1; Rest. Restitution, sec. 190. The fiduciary is held to the utmost measure of loyalty and accordingly he may not use a trust opportunity for personal advantage. Rest. Trusts, sec. 170. As stated in

Hoyt v. Hampe, 206 Iowa 206, 214 NW 718, 724,
220 NW 45 'The policy of the law is to put fiduci-
aries beyond the reach of temptation by making it
unprofitable for them to yield to it.'" *MacIsaac v.*
Pozzo, 183 P.2d 910 (Cal.-1947)

CONCLUSION

It is respectfully submitted that the judgment appealed
from should be reversed.

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Attorney for Appellants

Margolius and Deckelbaum

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BRIEF FOR APPELLEES

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
for the District of Columbia Circuit

NO. 20,073

ROBERT B. WEISS, ET AL.,

Appellants

vs.

FRANK M. PERPER, ET AL.,

Appellees.

NO. 20,074

BERNARD MARGOLIUS, ET AL.,

Appellants,

vs.

FRANK M. PERPER, ET AL.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RECEIVED

OCT 17 1966

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STATES COURT OF APPEALS

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FILED OCT 21 1966

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(i)

QUESTIONS PRESENTED

In the opinion of the Appellees Frank M. Perper, Julian Savage, Harold Perper, Henriette Sahm, Alan Sahm and Martin Perper, the questions presented are:

1. Did Appellee Frank M. Perper in April 1959 enter into an oral agreement with Appellants to develop the Metropolitan area of the District of Columbia with motels to be franchised by Holiday Inns of America?
2. Did Frank M. Perper have an additional oral agreement with Appellant Bernard Margolius which required him to offer Mr. Margolius a participating share in motels which he might develop not only in the Washington Metropolitan area but anywhere?
3. Did Appellants by their own actions abandon or terminate the alleged oral agreement which they claim was entered into in Richmond, Virginia, in April 1959 and did Appellant Margolius by his actions likewise terminate the oral agreement allegedly entered into between Mr. Perper and himself?
4. Were Appellants guilty of laches which precludes enforcement of the alleged agreement?
5. Was there any breach of trust by Mr. Perper?
6. Were the findings of fact clearly erroneous or were they sufficiently comprehensive to provide a basis for the lower Court's decision?
7. Was the claimed oral agreement in violation of the Statute of Frauds and therefore unenforceable?

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COUNTER-STATEMENT OF THE CASE

The original Complaint was filed by Appellants - Plaintiffs on November 2, 1962. They asserted that in April of 1959 they had entered into an oral agreement with Appellant Margolius and Appellee Frank M. Perper to obtain motel sites in the Metropolitan area, to seek franchises for the said Metropolitan area from Holiday Inns of America and to build motels. The alleged oral agreement, the existence of which was denied by Mr. Perper and the other Appellees, as explained by Appellants, included no mention of its duration, the number of motels to be constructed, the size of the motels, the boundaries of the Metropolitan area of the District of Columbia, or what was to happen if franchises could not be secured from Holiday Inns of America. Appellees contend that a written agreement was entered into for only the erection of a single motel at Shirley Highway-Glebe Road, Virginia. The written joint venture agreement and the partnership agreement prepared by Appellants Margolius and Deckelbaum, two of the joint venturers and parties to the agreements, verify these facts. (JA 466, 468). Appellants-Plaintiffs contended further that said Appellee Frank M. Perper in violation of said agreement, for his own benefit and the benefit of the other Appellees built or arranged to build motels in Washington, D.C., Maryland and in Virginia. They asserted further that said Appellee Frank M. Perper had taken his interest in these motels in the name of his then wife or in the names of his sons, or stepson, all of which was denied by Mr. Perper and the other Appellees. They further asserted that the interest of Appellee Savage stems from his being one of the original joint venturers. (JA 4-5)

The Appellants, Margolius and Deckelbaum, did not file their answer and cross-claim until November 18, 1963. (JA 14-21) They asserted that prior to 1959 the Appellee Frank M. Perper and Appellant Bernard Margolius were engaged in joint ventures relating to building and operating motels including Holiday Inn franchised

motels in various states. They further claimed that the agreement relied upon by Appellants-Plaintiffs was entered into, that they were a part of said joint venture and they take the same position that Appellants-Plaintiffs have taken with respect thereto. Mr. Margolius further claimed that he had a right based upon an oral agreement entered into with Mr. Perper in 1956 or 1957 permitting him to share in all motels which Mr. Perper constructed anywhere, (JA 129-130, 139), and that this, therefore, was an additional reason why he was entitled to participate in any motels constructed by Mr. Perper in the District of Columbia. He did not, however, in his cross-claim or at the trial claim that under this agreement he had a right to an interest in motels constructed by Mr. Perper outside of the Metropolitan area of the District of Columbia. Mr. Perper likewise denied this agreement and said that the previous relationship with Mr. Margolius had been on the basis only of separate deals and an individual written agreement for each business venture. Mr. Margolius, he stated, was never a partner but was always the attorney. (JA 327, 347) Mr. Margolius confirmed the fact that there had been a different written agreement on each occasion, and that no written general partnership agreement existed. (JA 122)

The Appellants-Plaintiffs, in their second Pretrial Statement of February 26, 1965, stated that when they became aware that Frank M. Perper had allegedly breached his fiduciary duty "instead of immediately suing him — decided that if each one could develop his own site they would avoid the litigation which otherwise would follow; and they have now discovered that Frank M. Perper, "except for his connection with Holiday Inns of America, was of no value to them and that apparently he is not a proper type of person." (JA 451)

Judge Holtzoff decided that the case should first be tried on the issue as to whether the contract allegedly entered into in Richmond existed, because as he pointed out, "if the Court finds that there was no such contract, then that would end the case and the other ramifications

should be reserved until after a decision on that issue." (Tr. 85). Again, (Tr. 634) the Court said "the only thing that I have to decide is what transpired at Richmond on April 26, 1959, isn't that it, what happened in Richmond on the fatal day?" (Tr. 634). In its opinion the Court passed only on this issue; Appellant Margolius' claim that he had a separate contract with Appellee Frank Perper; conduct of the Appellants-Plaintiffs indicating that no contract existed and their laches. (JA 40-48) The Court did not pass upon Appellees' defense of the Statute of Frauds deeming it unnecessary to do so.

At the time of the trial Frank M. Perper was 70 years of age, and had had an 8th grade education. (JA 313) He had been in the hotel business for 43 years and together with others had a number of Holiday Inn franchised motels from Florida up the east coast. Mr. Perper had never met or known of Appellants-Plaintiffs prior to the meeting in Richmond which forms the sole basis of the claim of these men. (JA 157) Their meeting and conversation on this occasion lasted only a short time. (JA 67, 319) Appellant Weiss was a realtor, a builder and developer. He had done a substantial amount of building in the Washington area. (JA 189) Appellant Finkelshtein was a licensed real estate broker, realtor, and a builder and land developer. (JA 238) Appellant Stolar had been engaged in the real estate business for 20 years and was a shareholder with the other Appellants in a corporation which was constructing homes in Arlington, Virginia. (JA 224-225) Appellant Broidie was a builder. (JA 233) Appellants-Plaintiffs had never been in the hotel business.

At no time, according to the testimony of all of the Appellants-Plaintiffs and Appellants Margolius and Deckelbaum was any document or memorandum ever reduced to writing showing that an agreement or contract was entered into by the parties involved herein relative to the development of the Metropolitan area of the District of Columbia with Holiday Inn Motels. The written

joint venture agreement for the motel which was constructed at Shirley Highway-Glebe Road was redrawn four times by the Appellant Deckelbaum (JA 375-392) and only involved the Shirley Highway motel. A written partnership agreement for the Shirley Highway venture was likewise drawn up by Messrs. Margolius and Deckelbaum who prepared all of the written instruments for the venture. This was likewise limited to the Shirley Highway Motel. The exhibits illustrate the numerous changes made in the agreement and the innumerable discussions had by the parties before the document was reduced to final form. (JA 375-392). Other documents demonstrate how carefully agreements between the parties were reduced to writing. (JA 396-398, 428-433, 435-441). Mr. Deckelbaum made numerous references to his voluminous files. (JA 278, 383-384) As finalized, the joint venture agreement stated that the instrument represented the entire understanding between the parties and that the joint venture was limited and restricted solely to the business purposes therein contained. (JA 383-384, 392).

Both Appellants Weiss and Finkelstein testified that they had heard rumors and seen an article in the newspaper concerning the construction of a motel by Mr. Perper, near the Shrine at Catholic University late in 1960 or early in 1961. (JA 200, 201, 245, 255). Mr. Stolar also learned of this. (JA 226) Appellant Finkelstein also learned of a Perper motel at 17th and Rhode Island Avenue, N.W. prior to the institution of the suit. (JA 257) Appellant Margolius likewise knew Mr. Frank Perper intended to build near Catholic University in late 1959. (JA 349)

None of the Appellants-Plaintiffs ever, personally or through counsel, contacted Appellee Frank M. Perper or any of the other Appellees concerning their claim prior to the institution of the lawsuit. (JA 315-316) The Appellants-Plaintiffs made no effort to contend to Appellees that Mr. Perper had breached the alleged agree-

ment. Two of them, Appellants Weiss and Finkelstein, were in contact with and visited the offices of Appellees Frank M. Perper and Savage on numerous occasions on business of the Shirley Highway-Glebe Road Motel. (JA 214) Not one word passed between them and Appellees concerning the claim nor was there any correspondence. (JA 214, 315-316)

Messrs. Weiss and Finkelstein themselves, together with Mr. Shapiro the lessee of Shirley Highway-Glebe Road motel and others, applied for a Holiday Inn franchise for a location on the Baltimore-Washington Parkway in July of 1961. (JA 253) This occurred after they knew that Mr. Perper was planning to build a motel near Catholic University in Washington but before ground was broken therefor. (JA 217) Appellant Stolar likewise had limited participation in the Baltimore-Washington Parkway deal (JA 214-215), but Appellant Broidie was never invited to participate although Mr. Weiss admitted he had a right to partake. (JA 215) No Holiday Inn franchise was secured but Messrs. Weiss, Finkelstein, Stolar and others constructed a Howard Johnson Motel on the site which is presently in operation. At the time of trial, Appellant Weiss was building a Howard Johnson Motel on U.S. 1 and Capital Beltway, only several miles from the Shirley motel although on a different highway. (JA 216) Appellant Weiss testified that one of the reasons suit was filed in this case was because he was turned down on the Holiday Inn franchise at Baltimore-Washington Parkway. (JA 215) This deal was never mentioned to Appellees. Nor were Appellants Margolius and Deckelbaum invited to participate. Even before this and prior to March 9, 1961, Mr. Weiss himself had attempted to secure a Holiday Inn franchise in downtown Washington. (JA 399)

Appellants Margolius and Deckelbaum have four Holiday Inn franchised motels in which Mr. Perper has no interest, at Emporia and Hampton Roads, Virginia, and Elyria, Ohio, and Newbern, North Carolina (JA 177), all of which were built after 1959. Emporia opened in the

Spring of 1962. Hampton in the Spring of 1962, Elyria, Ohio in the Spring of 1964 and Newbern after Shirley Highway. Mr. Perper was not invited by Mr. Margolius to participate in these ventures. (JA 179, 289-290)

Mr. Frank Perper testified that in the first meeting he had with Appellants-Plaintiffs he told them he had previously seen the ground and was not interested, but agreed to make a survey of the location. (JA 67) The next time he saw these gentlemen, which was a few days later in the office of Mr. Margolius, he reported to them that he decided to continue his survey for several more weeks to check the business that another motel was doing in the area. (JA 68) Appellant Weiss asked him to put the deal together for them. (JA 74) Mr. Perper did not attend the meeting where a final determination was made or where other terms of the joint venture were determined and had nothing to do with the terms agreed upon. He did, however, many things in connection with securing a franchise and arranging for the construction of the motel. (JA 78, 82, 326) Mr. Perper testified that on the occasions of the meetings which he held with Appellants and others that he had never entered into a discussion with respect to the building and development of a motel or motels, other than at the site of Shirley Highway and Glebe Road and that he had had no agreement with them other than to put that one deal together. (JA 313-314, 323, 335)

Appellee Harold Perper, one of the members of the joint venture at Shirley Highway and Glebe Road, testified that he had never met Appellant Weiss or Finkelstein formally, but they had come into his office and had been pointed out to him. (JA 352) He had met Mr. Brodie on the site when the Shirley Motel was about 75 percent completed. Further, that Messrs. Weiss and Finkelstein had been in his office 10 - 20 times. (JA 352) On none of these occasions did any of these Appellants, nor did Mr. Margolius when he saw him in April of 1959, ever tell him that an agreement had been reached concerning the construction of anything more than a single

motel on Shirley Highway. He learned of this claim for the first time after suit was filed. (JA 353) Nor did he have an agreement with his father to hold his interest in the Shirley Motel for him. It was his own on which he paid income tax. (JA 354)

Appellee Henriette Sahm, former wife of Appellee Frank Perper testified that on none of the occasions when she had talked with the Appellants -Plaintiffs, and she had seen them numerous times, did any of them claim that an agreement had been reached relative to the development of anything more than a motel at Shirley Highway and Glebe Road. She had gone to the building site, to an architect's office with Mr. Broidie on many occasions and Mr. Margolius had been to the architect's office when she was there on two occasions. Mr. Weiss had come to her daughter's home several times for discussions of possible investors, quite a few of whom she got into the deal, that she saw Appellant Finkelstein occasionally, that she attended meetings of people in the joint venture, saw all four Appellants-Plaintiffs at meetings, talked with them regarding the securing of investors, and at no time was anything said about an agreement to develop the Metropolitan area of the District of Columbia. (JA 358-360) She testified that she had given her interest in the motel to her son, Appellee Alan Sahm. (JA 358-360) Mr. Perper testified that he told Mr. Weiss that Harold Perper and Mrs. Sahm's son, Alan, would each receive a 5 percent interest in the Shirley motel. (JA 331) On none of the occasions when Mrs. Sahm had been in contact with the Appellants-Plaintiffs or Mr. Margolius or Mr. Deckelbaum did any one of them claim that an agreement had been entered into relative to the development of anything more than a single motel at Shirley Highway and Glebe Road, or that the Metropolitan area of the District of Columbia was to be developed. (JA 360)

The testimony of Appellee Alan Sahm was tendered to the Court who ruled that it was cumulative and there-

fore did not accept it. However, in a proffer made, it was represented that Mr. Sahm would testify that he attended two meetings at which all of the Appellants-Plaintiffs were present and that he had no recollection of any conversation or discussion between the parties indicating that anything other than the Shirley Motel was to be constructed. (JA 361-362)

Appellant Deckelbaum to some extent corroborated the testimony of Mr. Perper concerning what transpired at Richmond. Although he testified that he had participated in only a portion of that meeting, he heard only mention of the site at Shirley Highway-Glebe Road with which Mr. Perper said he was familiar and other general conversation pertaining to Holiday Inns and their operation. (JA 262-263)

Mr. Savage testified that Mr. Perper had no commitments from the Holiday Inns for the Metropolitan area (JA 57) and he heard no conversation on the part of anyone concerning commitments for the area with the exception of the conversation which he had with Messrs. Weiss and Broidie after they returned from Memphis. Area franchises, he said, were not given by Holiday Inns in 1959. (JA 63)

The letter of June 6, 1959, was written by Appellee Savage at the request of Appellants Weiss and Broidie. (JA 58) He did not talk to Mr. Perper before sending it out. (JA 59) It was on the letterhead of Mr. Savage's accounting firm and it was signed by him on behalf of Julian Savage & Company. (JA 371) At that time, Mr. Savage was in the public accounting business and Mr. Perper, as well as Appellants Weiss and Stolar, were among his clients. (JA 59, 62) On June 13, 1959, Mr. Perper signed applications for a franchise at Glebe Road and Shirley Highway listing Harold Perper as the principal which were filled out by Mr. Mann of Holiday Inn.

Mr. Kemmons Wilson, the President of Holiday Inns, telegraphed Appellee Frank Perper on June 14th in care of the Appellant Margolius:

"Upon receipt application and check franchise for specified Washington location will be granted."
(JA 416)

(This telegram was not turned over to Mr. Perper. (JA 75, 159, 161, 165-166)) On June 23, 1959, Mr. Wilson wrote to Mr. Savage suggesting in answer to the letter of June 6th that by that time he had received a copy of the telegram indicating that only a site franchise would be granted, (JA 416), which had been sent to Mr. Perper in care of Mr. Margolius (JA 416), of which Mr. Margolius was aware. (JA 159, 172-173) Holiday Inns, Mr. Margolius testified, were not issuing area franchises and the parties all knew that only a site franchise had been issued. (JA 159, 172) On July 14th, Mr. Ladd, Vice President of Holiday Inns, wrote Mr. Perper telling him a specific location franchise had been approved. (JA 417) The Appellants-Plaintiffs did not contend to Mr. Margolius that the site franchise was not what had been promised to Weiss and Broidie in Memphis (JA 172) nor did they take issue with Holiday Inns.

On September 23, 1959, Mr. Mann of Holiday wrote to Mr. Margolius advising him that there seemed to be some discrepancy in the franchise as to the exact location of the Arlington, Virginia Holiday Inn. He asked him to provide the exact address and a city map of the region indicating the location. On September 30, 1959, Appellant Norman Finkelstein sent a telegram to Mr. Margolius advising him that this letter had been discussed in his absence at a meeting of the promotion group and by telephone conversation between Mr. Perper, Mr. Mann and Mr. Ladd. The telegram further set forth the fact that a written reply from Mr. Margolius would not be necessary because Messrs. Mann and Ladd had received all of the information requested. (JA 451) On October 1, 1959, Mr. Wilson wrote to Appellee Frank Perper as follows:

"There should be absolutely no doubt in your mind that when we agreed for you to have

the franchise for the location you bought on Shirley Highway, that it was for that specific location. You will even recall that I said it was possible that we might even build a Holiday Inn less than one-half mile from you adjoining the Marriott Motel. The franchise you have for Washington is only for the corner of Shirley Highway and Glebe Road. It does not have any radius or area whatsoever." (JA 420)

Charles M. Collins, Vice President and General Counsel of Holiday Inns, testified that Holiday Inns intended only to grant a license for a single site when the franchise was sent to Mr. Perper. (JA 300) If a license was applied for at an additional site, an additional fee would be charged by Holiday Inns. He had sent out the license agreement to Mr. Perper. (JA 365) At this time the franchise read "The licensed territory shall be only that specific site and location known as _____". (JA 299) It was sent to Mr. Perper with the blank space on the first page because he did not know the address of the specific site and he intended Mr. Perper to fill in the address and the blank space. (JA 300-301) Mr. Perper then wrote in the blank space the words, "Arlington, Virginia and Washington, D.C." and returned the franchise to Mr. Collins. (JA 295-296) Mr. Walton of Holiday Inns struck out what Mr. Perper had written in, and his office, Mr. Collins believed, then put in the franchise "intersection of Glebe Road and Shirley Highway, Arlington, Virginia." (JA 301) He then, on June 23, 1960, returned the franchise to Mr. Perper saying to him:

"* * * It has been noted that you also wrote in on the first page of the license agreement that your licensed territory was Arlington, Virginia and Washington, D.C. In order that there may not be any misunderstanding concerning your licensed territory, let me repeat. Your licensed territory is for the specific location only upon which the Holiday Inn is situated. You do not have either the counties or the cities of Arlington, Virginia and Washington, D. C. It was a good try but it didn't

work. Please initial the change in the description of the licensed territory on the first page and also sign the back page of both agreements * * *."

Mr. Perper replied to Mr. Collins' letter by writing on the bottom of it:

"I resent the remark (it didn't work). I want you to know that I did not try to sneak or otherwise. It so happens my first letter was marked Washington." (JA 425-426)

Mr. Perper testified that he had written Arlington and Washington because people from Arizona using the Holiday Inn Directory would not know where Arlington was, but if Washington was mentioned, it would be known that it was only a few minutes away. (JA 333) This was borne out by the testimony of Mr. Ladd of Holiday Inns. (JA 106)

Appellants knew that the franchise had been issued to Frank Perper (JA 57-58, 146, 236), although the original application had listed Harold Perper as the principal. (JA 403-406)

Frank Perper further testified in answer to a question as to whether or not he had any sort of an arrangement with Holiday Inns of America for the Metropolitan area of Washington:

"No. The only thing I can tell you that is: we're earmarked, — what they call earmarked — and I have earmarked here 16 towns that I'm earmarked for — and when you're earmarked with Holiday Inn of America no one else can come in and get that franchise but the person that's earmarked." (JA 68)

He had been earmarked since 1958. (JA 69)

Mr. Collins disagreed with Mr. Perper and stated that he had nothing but specific site franchises; that Mr. Perper did not control the granting of franchises and that he had never had an area protection. He stated that the granting of franchises lay only within Holiday Inns of America and that Mr. Perper has not prevented any-

one from obtaining a franchise in the Washington area. (JA 312) There are no reserved areas held for any one, as he told Appellant Margolius in a September 30, 1958 letter to him. (JA 413-414)

Mr. Kemmons Wilson, President of Holiday Inns of America, testified that when he talked with Mr. Perper regarding a proposed motel at Shirley Highway-Glebe Road, that he advised him that Holiday itself was trying to get land adjoining Washington National Airport and that it might build within a mile of the Shirley motel although not on Shirley Highway. Mr. Krisch had built a Holiday Inn in Alexandria (JA 110-111), which Mr. Perper had objected to but Mr. Wilson told him that all they did was to franchise the individual inn. This was in another city on another highway.

Mr. Elmer Ladd, Vice President in charge of the Sales Department of Holiday Inns, testified that the Metropolitan area of Washington was never committed to Mr. Perper. (JA 104) Nor was he told that he could have first refusal on a franchise. (JA 105) Holiday Inns, Mr. Ladd said, did not consider Arlington as Washington, D.C. Geographically, the Arlington franchise is in Arlington as is the one in Alexandria in Alexandria. Arlington County would not be considered as Washington, D.C., nor Alexandria. (JA 105-106) He testified also that Holiday Inns was at the time of his deposition in 1963 talking to persons other than Mr. Perper regarding an Inn in downtown Washington. (JA 107)

While Mr. Perper testified that the Holiday Inn at Shirley Highway and Glebe Road was entitled to a protection, and as he explained it, he did not believe Holiday Inns of America would grant a franchise to someone to build on the same road nearby (JA 69-70), he explained that if someone desired to build on another road such as in Alexandria, which is not on the Shirley Highway but only about 4 miles from Shirley, Holiday Inns would give that person a franchise. (JA 69-70) Mr. Perper stated that the franchise at the Shrine Motel near

Catholic University would give him the basis for protection in the City while the Shirley Highway motel would be protected with 4 or 5 miles of that location. (JA 70-71)

Mr. Collins' attention was also called to the printed license agreement used by Holiday Inns of America, specifically, the following language:

"It is mutually covenanted and agreed as follows:

"FIRST: Licensor hereby grants to Licensee subject to the terms and conditions hereof, a non-assignable exclusive license to use said system in the construction and operation of one or more Holiday Inns within, and only within the Metropolitan area or area described as follows (hereinafter referred to as the 'Licensed Territory'):"

He recognized an inconsistency between this language and the language designating a particular site which he explained by pointing out that at the time the license agreement form was originally printed, it was the policy of Holiday to grant franchises for licensed territories which would include either a county or city, and he pointed out that on several occasions, they had given all the territory within a radius of 25 or 50 miles of a certain location. However, around 1958, Holiday limited the policy of granting area franchises and thereafter granted them only for a specific location. (JA 303) He pointed out further that the typewritten language which had been inserted by his office in the license agreement was an attempt to make clear that the franchise was only for one specific piece of ground. (JA 303) He also pointed out that the references in the same printed form in other places to licensed territory were obsolete and inapplicable. He pointed out that this was embarrassing from a standpoint of legal draftsmanship but that time and pressure had been a factor and Holiday did not have time to get the form reprinted. (JA 304)

William Jeffreys Mann also testified that Frank Perper had no area control or protection in the Metropolitan area of Washington. (JA 86) While Holiday had al-

ways asked Mr. Perper to develop additionally in the Washington, D.C. area, only specific franchises were given for a specific location. (JA 87) When Mr. Mann filled out the application for the two-acre site at Shirley Highway and Glebe Road, he made an error in referring to the District of Columbia. (JA 88) Appellant Weiss had contacted Mr. Mann relative to securing a franchise in downtown Washington. (JA 399) Mr. Mann testified that there were no territorial limits on the franchise at Shirley Highway and Glebe Road but that the motel at that location would be protected against unfair competition and would receive the same protection Holiday was giving Frank Perper and Martin Perper in other locations. (JA 95-96) He said that his statement that Holiday Inns was committed for the Washington area was in error and that Holiday was never obligated for anything other than a specific site on each and every franchise in the Washington area. (JA 100-101) Mr. Mann was characterized by Mr. Collins as a salesman in 1961 and one who was not a member of the Executive Committee or Board of Directors. (JA 309)

Mr. Mann was asked about franchises by Holiday Inns at College Park, Maryland, Greenbelt, Maryland and Andrews Air Force Base, Maryland, the bulk of which he stated were in Appellee Martin Perper's name. He further testified that Martin Perper and Frank Perper were two different individuals, that Holiday had separate financial statements from both (JA 86) and recognized that they were separate in their business dealings.

In September of 1959, Mr. Deckelbaum attended a meeting of the investors and promoters of the Shirley motel at which time Mr. Frank Perper stated that he had the protection and the right to develop the entire area and that he would take everyone else in if he ever built another motel, except for Mr. Margolius. (JA 363)

Mr. Rosenheim, a joint venturer at Shirley motel, was likewise a joint venturer in the Shrine motel near Catholic University. Appellant Stolar and his brother,

in 1961 or early 1962, invested \$44,000.00 with Frank M. Perper and Associates and have an interest in the Holiday Inn at Rosslyn, Virginia. He did not tell the other Appellants-Plaintiffs of his investment at the time he made it. (JA 229-230) Robert Stolar was a Shirley Motel joint venturer. (JA 384)

Mr. Stolar said that he had become aware of difficulties existing between Mr. Perper and Mr. Margolius (JA 226). Mr. Margolius testified that one-half of the time between 1959 and 1962, Mr. Perper was not talking to him. (JA 136) After 1959, Mr. Perper refused to come to Mr. Margolius' office. The problems with respect to the Durham motel started in March of 1959, (JA 154), according to Margolius. There was constant bickering between them over Durham. (JA 181) Mr. Margolius further testified that at the meetings held in connection with the Shirley motel venture there was a lot of argument and acrimony, which he characterized as like a fish wives' meeting and Mr. Weiss agreed. (JA 174, 212) He did not know that the unpleasantness ever stopped. The only meeting he recalled where there were no hard feelings was a meeting at which time the parties agreed to lease the motel. (JA 174) Dissatisfaction existed over the legal work performed by Appellants Margolius and Deckelbaum for Mr. Perper. (JA 268) Mr. Margolius said he did not invite Mr. Perper to join with him in his motels because of his bickering with him and refusal to talk to him and that Mr. Perper had severed his relationship with him in that manner. (JA 180-181)

Mr. Perper testified that Mr. Weiss and Mr. Finkelshtein authorized him to sell the motel. He contacted the Helmsley Speer office and told them it might be a sale or lease. (JA 339-341). Thereafter, Mr. Margolius corresponded with Mr. Liebler of this office and subsequently, the motel was leased to Mr. Shapiro. (JA 452)

Mr. Deckelbaum's letter which accompanied the final draft when it was sent to the Joint venturers, set forth the fact that a number of changes suggested by the joint venturers had been made. (JA 454)

The license agreement originally carried the name of Mr. Perper as licensee, thereafter, the office of Appellants Margolius and Deckelbaum arranged for a change which added the names of Harold Perper and Edwin Cohen. All of this was with the knowledge and consent of Appellants. (JA 57-58, 146, 236, 285, 365-369, 376, 403-406)

The Deed of Trust for the Shrine motel near Catholic University discloses that Appellees Frank Perper, Henriette Sahm, Appellee Julian Savage and his wife, Nancy Savage, and Sol C. Snider and his wife, Lillian Snider, are indebted under this instrument recorded June 7, 1961 in the amount of \$950,000.00 representing money loaned on said property. (JA 455)

SUMMARY OF ARGUMENT

Appellee Frank M. Perper did not enter into an agreement with Appellants to develop the Metropolitan area of the District of Columbia with Holiday Inn motels. Mr. Perper had never met Appellants-Plaintiffs prior to April 1959 in Richmond nor known of them but, for a number of years had been in the hotel business and had an interest in a number of Holiday Inn franchised motels on the east coast. The brief oral discussion at that time did not result even in an agreement to build a motel at Shirley Highway and Glebe Road. Only preliminary talk was had on that occasion between the parties.

While there were additional talks thereafter participated in by Appellees Frank M. Perper, Julian Savage, Henriette Sahm (Mr. Perper's then wife) and Harold Perper, with Appellants, these dealt only with a single motel at Shirley Highway and Glebe Road. There was not one document or memorandum made by any of the Appellants verifying that any agreement was made other

than the Shirley Highway-Glebe Road joint venture written agreement and a written partnership agreement, both of which provided for the construction of only one motel.

The joint venture written agreement was revised and redrawn by Appellant Deckelbaum on four different occasions and he drew the partnership agreement. The joint venture instrument set forth the fact that it represented the entire agreement of the parties and that the joint venture was limited and restricted "solely to business purposes herein contained." (JA 376)

Although Mr. Perper had been asked to put the deal together and at various times, together with Mrs. Sahm, worked on different phases of it, neither he nor Mrs. Sahm had any financial interest in it. Mr. Perper's son, Harold, and Mrs. Sahm's son, Alan, had been given interests in the Shirley Highway-Glebe Road venture.

Mr. Perper applied to Holiday Inns of America for a franchise at Glebe Road and Shirley Highway listing Harold Perper as the principal. The franchise for the specific site only, however, was originally issued to Mr. Perper with the knowledge of all the parties, and thereafter, the franchise, by the consent of all of the parties, had the names of Appellee Harold Perper and Mr. Edwin Cohen added. Nor did Appellants take issue with Holiday Inns and contend that the franchise granted should have been for an area and not for just one site.

Appellees Henriette Sahm and Harold Perper testified that they knew of no agreement, written or otherwise, pertaining to the development of the Metropolitan area of the District of Columbia and the only written agreement they knew of pertained solely to one joint venture at Shirley Highway and Glebe Road, Virginia. Appellee Savage likewise testified that nothing had been said to him concerning commitments for the area on any of the occasions when he had gone to meetings attended by Appellants; that Appellants Weiss and Broidie had told him of an understanding reached with the President of Holiday Inns for a franchise at Shirley Highway and Glebe

Road, Virginia, together with the area but when he wrote at the request of these men to Holiday Inns, Holiday granted only a site franchise for the single location in Virginia, and pointed out thereafter that the franchise had no radius or area. Witnesses from Holiday Inns testified that there were no commitments of any sort for the area, they gave a franchise to another person unconnected with any of the parties involved here, for a motel in Alexandria, and at the time of trial, they were considering awarding still another franchise to other persons in Washington, D.C.

The conduct of Appellants-Plaintiffs was a further indication that no agreement to develop the Metropolitan area had been agreed to and secondly, that the Appellants, by their own actions, terminated and abandoned the claimed oral agreement. None of them complained, bothered or attempted to talk to Appellee Frank M. Perper concerning their claim although they knew he was building a motel near the Shrine at Catholic University and Appellant Finkelstein knew he was building a motel at 17th and Rhode Island Avenue, N.W. Instead, Appellants Weiss and Finkelstein with others, including Mr. Shapiro, the lessee of Shirley motel, applied for a Holiday Inn franchise on Baltimore-Washington Parkway. While Appellant Stolar was given a limited participation, Appellant Broidie was never invited to join in this venture nor was Mr. Perper, Mr. Margolius or Mr. Deckelbaum. Even earlier, Appellant Weiss himself had applied for a motel in downtown Washington. Although the Holiday Inn franchise was not secured, a Howard Johnson motel was constructed on the Baltimore-Washington Parkway site and Appellants-Plaintiffs set forth in their Pretrial Statement that Appellee Frank M. Perper, except for his connection with Holiday Inns of America was of no value to them and stated further that he was not a proper type of person.

Appellee Frank Perper denied also that he had ever been a partner of Mr. Margolius or that they had ever

entered into an oral general partnership agreement. He testified that their relationship had consisted only of entering into individual written agreements for the construction of specific motels. There was no basis for the claim of Appellant Margolius that he was a partner of Appellee Frank M. Perper as a result of previous business deals with Mr. Perper where he had received interests in motels for legal work. Mr. Margolius admitted that each had been the subject of a specific written instrument and no general partnership agreement was ever drawn or executed by the parties.

Appellants Margolius and Deckelbaum had obtained their own franchises from Holiday Inns after 1959 and had constructed four motels in Virginia, Ohio and North Carolina. They had not invited Mr. Perper to participate in these ventures. The actions of Messrs. Margolius and Deckelbaum in building four motels in Virginia, Ohio and North Carolina constitute a repudiation and contradiction of the position that Mr. Margolius has taken.

The testimony of the Appellants and of Mr. Perper indicates that they had difficulties in getting along with one another, that Mr. Margolius and Mr. Perper had come to the parting of the ways in 1959 after numerous arguments and some of the meetings which took place between all of the parties were described as acrimonious.

Even if the alleged oral partnership agreements had been entered into and they were denied, they were subject to termination at the will of any of the parties at any time. Actually, the testimony demonstrates that the parties by their actions had terminated the alleged oral agreements.

Appellants are guilty of laches and do not come into Court with clean hands because of their own activities.

There was no breach of trust on the part of Appellee Frank Perper in his relationship with Appellant Margolius or with the other Appellants-Plaintiffs. As has been

pointed out, no oral general partnership ever existed between Mr. Margolius and Mr. Perper and their association was on an individual venture basis. Their actions in going their separate ways and building their own motels is demonstrative of this fact. While Appellee Frank Perper originally held the franchise for Shirley Highway-Glebe Road venture in his name and later with two others, this franchise carried no commitment for any other franchises and Mr. Perper had no right or privilege thereby to construct other Holiday Inns in the Metropolitan area of Washington. He has appropriated no rights or privileges of the Shirley Highway-Glebe Road venture and has, at all times, acted in the best interests of said venture.

The Findings of Fact as were reflected in the Court's Opinion were based upon substantial testimony and were sufficiently comprehensive and pertinent to the issues.

The oral agreements relied upon by the Appellants were, in any event, in violation of the Statute of Frauds because they were agreements the parties did not contemplate could and would be performed within the space of one year, and allegedly involved the obtaining of sites, franchises, and building of motels. They were, therefore, unenforceable.

ARGUMENT

I

The Findings of Fact Were Based Upon Substantial and Convincing Testimony

Counsel for Appellants-Plaintiffs do not argue that the Findings of Fact of the Trial Judge were "clearly erroneous." They argue that Appellants' evidence of the joint venture agreement was overwhelming and beyond question and adopt the brief of Appellants Margolius and Deckelbaum. Counsel for Appellants Margolius and Deckelbaum argue that the Findings of Fact are clearly erroneous. There is no sound basis for these contentions.

In considering the contentions of Appellants it should be borne in mind as set forth in the provisions of Rule 52(a) of the Federal Rules of Civil Procedure that "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses."

And it will also be appropriate to bear in mind as stated in *Schilling v. Schwitzer-Cummins Co.*, 79 App. D.C. 20, 142 F.2d 82, 84 and *Carr v. Yokohama Specie Bank, Ltd.*, 200 F.2d 251, (9th Cir.) that:

"The ultimate test as to the adequacy of findings will always be whether they are sufficiently comprehensive and pertinent to the issues to provide a basis for decision, and whether they are supported by the evidence."

And see *Summerbell v. Elgin National Watch Company*, 94 App. D.C. 220, 215 F.2d 323. These tests as applied to the record in this case demonstrate the correctness of the lower court's decision.

There is no question but that there was a sharp conflict in the testimony produced by the Appellants and the Appellees in this case. It is the duty of the trial court in this situation to appraise all facts adduced in proof, to weigh the evidence, and to choose among conflicting factual inferences those which it considered most reasonable. Under such circumstances, the power of an Appellate Court is limited to a determination of whether those inferences and conclusions have any substantial basis in the evidence. *Penn-Texas Corp. v. Morse*, 242 F.2d 243. (7th Circuit).

The trial Court is not required to make findings of all the facts presented and need only find such ultimate facts as are necessary to reach the decision in the case. The Judgment should stand if the opinion below gives the Appellate Court a clear understanding of the basis of the decision. The lower Court had the primary function of finding the facts and choosing from among conflicting

factual inferences those which it considered most reasonable. There was ample support for the findings and opinion of the lower Court. There is no basis upon which this Court should substitute its interpretation and construction of the evidence for that of the trial Court.

A. The Agreement Entered Into by the Parties Called for the Construction of Only One Motel, in Which Appellee Frank Perper Had No Financial Interest.

It is incredible that there is not one document or one memorandum in the possession of any of the Appellants or in the motel file maintained by Messrs. Margolius and Deckelbaum evidencing the alleged oral Richmond agreement, nor was any ever in existence. The written joint venture agreement and the written partnership agreement prepared by Mr. Deckelbaum contained not one word about anything other than the Shirley Highway-Glebe Road motel. The joint venture agreement which was redrawn four times by Appellant Deckelbaum very carefully pointed out that it represented the entire agreement between the joint venturers and that it was limited and restricted solely to the business purposes therein contained. Appellants were astute businessmen, accustomed to entering into building and real estate contracts, who made certain that every single thing was reduced to writing, except what they claimed was the first agreement entered into. If such an agreement had existed, it would have been the first one drawn up.

It is difficult also to believe that Mr. Perper, an experienced hotel man, on the basis of a short meeting with Appellants-Plaintiffs, who were inexperienced in the hotel business, and without any previous knowledge of them, would enter into the alleged Richmond agreement.

Counsel for Appellants Margolius and Deckelbaum is in error when he argues that this Court has about the same opportunity that the trial Court had to judge the

credibility of Appellee Frank Perper contending that the principal part of his direct examination at the trial consisted of "Appellee's adoption of his deposition testimony". They fail to point out that he was on the witness stand at great length, including cross-examination, by both of counsel for Appellants. (JA 313-351)

Counsel for Appellants-Plaintiffs states that Mr. Perper was the only witness who testified concerning the meeting in Richmond other than the Appellants. He overlooks the fact that Appellees Henriette Sahm, Harold Perper and Alan Sahm have all testified (the testimony of Alan Sahm being proffered) to the effect that at no time on the occasion of any of the numerous meetings thereafter which they attended with Appellants, did Appellants ever claim that any agreement had been entered into to develop the Metropolitan area of the District of Columbia with motels or that anything was discussed other than the Shirley Highway-Glebe Road motel. Also, Mr. Savage has testified that nothing was ever said to him concerning commitments for the area.

Nor is it true that the testimony of Appellee Frank Perper was false, as contended by Appellants or that the trial Judge was being charitable to him as contended by Appellants Margolius and Deckelbaum in characterizing his testimony. The Court made it clear that it considered Mr. Perper to be a truthful witness. (JA 44). And it must not be overlooked that the trial Judge had the opportunity of seeing and judging the credibility of the oral witnesses. The Court did not hesitate to express its opinion concerning the impression made upon it by the Appellants-Plaintiffs and particularly that of Mr. Weiss, whose testimony was characterized in one respect by the Court as bordering on "puerility". Appellants point out several conflicts in the testimony of Mr. Perper. There is no question but that there are some conflicts in the testimony as is true of most trials where witnesses are interrogated about events in the past, in both pretrial depositions, many years after the event has taken place, and at the trial even later. These

can be due to forgetfulness, mistakes or as a result of refreshment of memory. This is why the heavy burden is placed upon the trial Judge who is sitting as Judge and jury to determine the credibility of the witnesses.

Mr. Perper testified to the events commencing with the first meeting in Richmond and extending over a period of several months. It is clear that his function was to put the Shirley Highway-Glebe Road deal together, to arrange to get the franchise for the site, to arrange to help with the financing, the building of the motel, the borrowing of the money and anything else that might be necessary. This he did to the best of his ability but he did not enter into an agreement to build any other motels with the Appellants nor had he any previous general partnership agreement with Mr. Margolius. While the franchise for the Shirley motel was originally in his name solely, neither he nor Mrs. Sahm were joint venturers and had no financial interest in the motel.

In seeking to convince this Court that the findings of fact were "clearly erroneous", Appellants have given the Court only a partial review of the evidence. The great weight of the evidence abundantly supports the opinion of the trier of the facts.

Counsel for Appellants Margolius and Deckelbaum states that a mere reading of the exhibits quoted or summarized in the factual portions of their brief will convince the Court that Appellee Frank Perper did not tell the truth in his pretrial deposition or at the trial. The Appellants further argue that the exhibits referred to demonstrate a "consciousness that the oral agreement made in Richmond covered not only the Shirley-Glebe site but also the Washington area". (Appellants' Margolius and Deckelbaum brief pages 30-31). On the contrary, these documents, and many of the other exhibits, corroborate the testimony of Mr. Perper that neither the alleged Richmond or Charlotte agreements were ever entered into, and are indicative of his truthfulness and of the fact that he was carrying out his promise to put the Shirley Highway-Glebe Road deal together.

Plaintiffs' exhibits 20 and 21, which are the same as defendants' 39 and 40, are the applications filled out by Mr. Mann and signed by Mr. Perper on June 13, 1959. It will be seen that these applications list Appellee Harold Perper as the principal and it will be remembered that the joint venture agreements as drawn up by Appellant Deckelbaum struck out the name of Frank Perper which had first been inserted as the person who was to obtain the franchise and inserted the name of Harold Perper. (JA 458a) And, after the franchise had originally been issued in the name of Frank Perper, as Appellants knew, it was changed as the result of agreement of the parties, and by correspondence of Appellant Deckelbaum with Holiday Inns, to include the names of Harold Perper and Edwin Cohen as well as that of Mr. Perper. (JA 460, 461, 462, 463, 464)

On June 14, 1959, Mr. Wilson of Holiday sent a telegram to Mr. Perper in the care of Mr. Margolius, which was not turned over to Mr. Perper, advising that upon receipt of application and check that a franchise for a specified Washington location would be granted, (Defendant's Exhibit 3, JA 416), and on June 23, 1959, Mr. Wilson, in answer to Mr. Savage's letter of June 6th, advised him that by that time he had received a copy of the telegram of June 14th. (Defendants' Exhibit 1, JA 416). On July 14, 1959, Mr. Ladd of Holiday advised Mr. Perper that an application had been granted for a specific site at the intersection of Glebe Road and Shirley Highway. (Defendants' exhibit 41, JA 417-418)

Mr. Mann advised Mr. Margolius on September 23, 1959 (JA 465) that there seemed to be some discrepancy in the franchise as to the exact location of the Arlington, Virginia Holiday Inn. On September 30, 1959, Appellant Finkelstein telegraphed Mr. Margolius that this letter had been discussed in Mr. Margolius' absence at a meeting of the promotion group and by telephone conversation between Mr. Perper, Mr. Mann and Mr. Ladd. (JA 451)

On October 1, 1959, Mr. Wilson advised Mr. Perper that the franchise on Shirley Highway was only for the corner of Shirley Highway and Glebe Road, and that it did not have any radius or area whatsoever. (Defendants' Exhibit 43, JA 420) Defendants' exhibit 45 cont'd (JA 424), the memo of October 8, indicates that Mr. Perper was carrying out his promise to put the deal together. This is likewise true of Defendants' Exhibits 42 (JA 418-419), 46, 47, 48, 49, 50, 55 and 56 (JA 425-441). Plaintiffs' exhibits 7, 8 and 9, early drafts of the joint venture agreement, (JA 375-392) in no way detract from the testimony of Mr. Perper nor do they cast doubt on his credibility. As a matter of fact, Exhibit 7 set forth initially the fact that the franchise was first to be taken in the name of Frank Perper. Plaintiffs' Exhibit 18 (JA 401-402) while inaccurate, so far as the letter described Mr. Perper as managing venturer of Shirley - Glebe motel joint venture, was actually a letter not from Mr. Perper but from a lawyer who was apparently acting for Mr. Perper and the Shirley joint venturers, making demand on the lessee, Shapiro, for the price of linens which the lessee was supposed to have sold without authority. (JA 401-402) These exhibits and plaintiffs' exhibit 14 (JA 396-398) all reflect the fact that Mr. Perper was carrying out his promise to put together the deal, the fact that only a single site had been granted by Holiday Inns, the details of the written joint venture agreement, the agreement to enable the borrowing of money, and the pledging of the credit of Mr. Perper and Mr. Sahm.

Nor was his letter to Mr. Wilson under date of October 2 (Defendants' Exhibit 45, JA 421-422) in any way untruthful. He had decided not to associate with Mr. Margolius on any future deals and he requested advance consideration if Mr. Margolius or anyone else wanted a Washington franchise. It will be remembered that the Holiday Inn witnesses asserted that he had no commitment whatsoever for the area and did not have first refusal on a franchise.

The letters and telegrams which passed between the various parties in the period from June to October 1959, likewise indicate that all of the parties, including legal counsel, were satisfied that only a single site franchise was desired and that only a single site franchise had been granted. And it was clear, also, that a single site was all Holiday Inns had promised or intended.

There are additional exhibits which have not been referred to by Appellants which bear out the contention of Appellees that the alleged Richmond agreement had never been entered into. Mr. Decklebaum sent the final draft of the joint venture agreement to the joint venturers under date of January 20, 1960, mentioning the fact that it had been gone over by a number of the joint venturers and that suggested changes had been made. He also drew up a certificate of partnership which was signed by the joint venturers and which made clear that the agreement contemplated only a single motel. And there was correspondence, also, between Holiday Inns and Mr. Deckelbaum pertaining to the changing of the franchise from Mr. Perper to include Harold Perper and Mr. Cohen. (JA 443-449)

Nor does the letter of June 6, 1959, support the argument of Appellants. Mr. Weiss and Mr. Broidie returned from Memphis, Tennessee, where they had talked with Mr. Wilson, President of Holiday Inns of America. They advised Appellee Savage, who was then a public accountant, and who had represented them as well as Mr. Perper, that Mr. Wilson had agreed that Holiday Inns would issue a franchise at the corner of Shirley Highway and Glebe Road as well as for the area. Mr. Savage, who had no personal knowledge of what had transpired in Memphis, but on the basis of what Mr. Weiss and Broidie had told him, and at their request, wrote on the letterhead of his accounting firm to Mr. Wilson, asking that he confirm these facts. Mr. Savage told these men, thereafter, that only a site franchise had been secured. While Mr. Perper is criticized because of a discrepancy in his testimony as to when he first

learned of the letter, the fact remains that he did not learn of it until long after it was sent out — and all of the necessary papers for the Shirley Highway-Glebe Road venture were prepared by Appellants Margolius and Deckelbaum a considerable time after the June 6th letter.

Appellant Margolius knew that Holiday Inns was no longer granting area franchises and that it never reserved any locations for anyone. If there was any basis to Appellants' contention that Messrs. Weiss and Broi-die had been promised an area, Appellants would have contacted Holiday Inns and protested when only the site franchise was forthcoming. Nor did they ever protest the issuance of the franchise in Mr. Perper's name.

Mr. Perper is criticized for his deposition testimony that he did not apply in writing for the franchise. Again, he was being interrogated in 1963 concerning a 1959 application. He had, the testimony has shown, other interests and other motels. When the testimony of Mr. Mann was given after the Perper deposition, it appeared that he had filled out the application papers and Mr. Perper had signed them in his office. And Mr. Perper's testimony at the trial confirms this. (JA 341-342)

Appellants attack Mr. Perper for his testimony concerning the original franchise agreement. It is argued that Mr. Perper was untruthful when he said in his deposition of March 1963 that he had nothing to do with any change in the location referred to on the franchise and that he didn't know if anyone had made a change. He is also charged with failing to admit that he had written in on the first page of the franchise "Arlington, Virginia and Washington, D.C.". Let us review the facts. The questioning of him during his deposition as to this was very brief. (JA 80) He was asked if any change had been made on the franchise as to the location and he answered, "No, Sir". Then he was asked if Mr. Deckelbaum sent him a franchise which was changed by some eradication. He answered, "No, Sir" to that question and said that no one had better make a change on a

franchise without the parent company doing it. He was never asked until the trial if he had written in "Arlington, Virginia and Washington, D.C." He not only admitted it but explained that it was for the purpose of identifying Arlington in the Holiday Inn directory as being close to Washington for a prospective western visitor, not for the purpose Appellants-Plaintiffs suggest, of seeking a franchise for more than one site. His testimony in this respect was corroborated by Mr. Ladd. (JA 106)

When the testimony of Charles Collins, the Vice President and General Counsel of Holiday Inns and Mr. Perper was received at the trial, the situation was clearly and completely explained. On June 13, 1960, Mr. Collins sent Mr. Perper the license agreement (franchise) for a specific site and location with a blank space on it which he had expected Mr. Perper to fill in with the address of the Shirley Highway - Glebe Road motel. Mr. Perper had then written in "Arlington, Virginia", and Washington, D. C." (JA 296) Mr. Walton of Holiday Inns struck out the language which Mr. Perper had written in and put in "intersection of Glebe Road and Shirley Highway, Arlington, Virginia", and returned the franchise to Mr. Perper for initialing and execution. Mr. Perper did not make the obliteration as contended by Mr. Friedlander. (Appellants-Plaintiffs' brief, page 7) Mr. Perper then wrote on the bottom of Mr. Collins' letter "I did not try to sneak or otherwise. It so happens my first letter was marked Washington". (JA 425-426) It was apparent that Mr. Perper, after returning the letter to Mr. Collins promptly, then forgot about it. Mr. Perper changed nothing on the franchise. He merely initialed it.

Mr. Savage testified that Mr. Perper had the right to protect the franchise for Shirley Highway-Glebe Road motel. This was, he explained, something which is just by policy of Holiday Inns of America. When he testified that he thought that the right to protect the franchise was inherent in the franchise agreement for Shirley Highway-Glebe Road motel, it was obvious from his testimony that he had in mind simply the protection that would be given

any franchise holder when someone desired to put another motel in the area of the existing motel.

The policy of Holiday Inns of America was fully explained by its employees and the President of that Company. It had not committed the Metropolitan area to Mr. Perper or anyone else. The only protection afforded the franchise at Shirley motel was to the extent of precluding someone from building on the same highway a few miles away. (JA 110) Geographically, the Shirley motel was in Arlington and was not considered Washington, D.C. Holiday Inns, as a matter of fact, granted an Alexandria franchise to Mr. Krisch who had no connection with any of the parties herein. While a portion of Mr. Mann's deposition testimony was referred to by Appellants, he said further that his statement in his letter of March 9, 1961, that Holiday Inns was committed for the Washington area was erroneous and that when he filled out the application referring to the District of Columbia, he likewise erred. Mr. Perper, he said, had no area control or protection in the Metropolitan area of Washington and that Holiday Inns was never obligated for anything other than a specific site on each and every franchise in the Washington area. This testimony was fully borne out by that of Messrs. Wilson, Ladd and Collins of Holiday who, unlike Mann, were members of the Executive Committee who approved the Shirley Highway-Glebe Road franchise. (JA 107-108) Nor did Mann say the Washington area protection was predicated on the Shirley-Glebe franchise. He said there were no territorial limits on this franchise but that the motel would be protected from unfair competition. However, as referred to by Mr. Ladd, this meant only on the same road and close thereby.

Mr. Collins, Vice President and General Counsel of Holiday Inns, stated that Mr. Perper did not control the granting of franchises, had no area protection and had never prevented anyone from obtaining a franchise in the Washington area. Nor were there any reserved areas held for anyone as he told Mr. Margolius in 1958.

Mr. Ladd testified to the same effect, that Mr. Perper was never told he could have first refusal on a franchise.

Appellants Margolius and Decklebaum criticize Mr. Perper because he testified he had not written a letter saying he wanted to sell the motel and had not stated he had a 10-percent interest, (Plaintiffs' Exhibit 11, JA 393). Again, the deposition he refers to was taken in 1963, the letter which had probably been written in 1960, was not shown to him at that time in order to afford him the opportunity of refreshing his recollection and was not exhibited until the trial in 1965. There, he readily admitted writing the letter and explained he had been in touch with Mr. Weiss before he wrote it and had been told at that time that if he was not going to operate the motel they were going to lease or sell it. (JA 338) He also stated he had received authority to sell the motel from both Mr. Weiss and Mr. Finkelstein. (JA 339-341). And this is borne out by defendants' exhibit No. 32, a letter from Mr. Margolius to Mr. Liebler of Helmsley-Speer, New York City, concerning the leasing of the motel to Mr. Shapiro.

There was not one single act on the part of Appellants-Plaintiffs tending to show that the alleged agreement had been entered into prior to the filing of their law suit. All of their actions as well as those of Mr. Perper indicated that the only agreement entered into was for a single venture at Shirley.

Very conveniently, the Appellants-Plaintiffs say that they had forgotten about Mr. Savage's letter of June 6, 1959, until it became advantageous for them to remember it. They could not possibly have forgotten this letter because of the correspondence from Holiday Inns immediately thereafter. They knew that the area had never been promised or granted to them.

The conduct and actions of Appellants-Plaintiffs likewise indicated a "consciousness" on their part that they themselves did not consider that an agreement had been entered into for anything other than the Shirley Highway-

Glebe Road venture. They learned of Mr. Perper's intention to build the Catholic Shrine motel late in 1960 or early in 1961. Mr. Finkelstein, thereafter, learned of the motel at 17th and Rhode Island Avenue, N.W. None of them bothered to contact Mr. Perper or any of the other Appellees about this or to complain to him, although Mr. Deckelbaum stated that Mr. Perper had, at a meeting of the parties, offered all Appellants, except Mr. Margolius, the opportunity of associating with him in additional motels that he developed. Mr. Rosenheim, a Shirley motel joint venturer, elected to participate in the Catholic Shrine motel. And in 1961, many months before this suit was filed, Appellant Stolar and his brother made a very substantial cash investment in Frank M. Perper and Associates and presently have an interest in the Holiday Inn at Rosslyn, Virginia, with which Mr. Perper is affiliated.

Appellants Weiss and Finkelstein, were constant visitors to the offices of Appellees Frank M. Perper and Savage in connection with the business of Shirley Highway motel. Instead of complaining to Mr. Perper or the other Appellees, Mr. Weiss first tried to secure a Holiday Inn franchise himself in downtown Washington and thereafter Appellants Weiss, Finkelstein, Stolar, Mr. Shapiro (the lessee of the Shirley Highway-Glebe Road motel), and others applied for a Holiday Inn franchise on Baltimore-Washington Parkway. They did not tell Mr. Perper what they were doing because, as several of them said, since he had elected to build a motel without telling them, they were not obligated to discuss their ventures with him. Indeed, Appellants-Plaintiffs in their second Pretrial Statement pointed out that "if each one could develop his own site they would avoid the litigation which otherwise would follow" because these Appellants had discovered that Mr. Perper "except for his connection with Holiday Inns of America, was of no value to them."

As Mr. Weiss admitted, one of the reasons suit was filed was because he and his associates were turned

down on the Holiday Inn franchise at Baltimore-Washington Parkway. They did, however, build a Howard Johnson motel on the site which is presently in operation. And at the time of trial, Mr. Weiss was building another Howard Johnson motel on U.S. Route 1 several miles from the Shirley motel. And as strange as it may seem, Appellants Weiss, Finkelstein and Stolar did not invite Appellant Broidie to participate in the Baltimore-Washington deal although Mr. Weiss admitted he had a right to participate.

The Appellants-Plaintiffs, with the exception of Mr. Broidie, obviously desired to build motels on their own without Mr. Perper and desired no further connection with him. Nor did they invite Appellants Margolius and Deckelbaum to participate. If the alleged Richmond agreement had been entered into, why did Appellants Weiss, Finkelstein and Stolar leave out Mr. Broidie and fail to invite Appellants Margolius and Deckelbaum to participate? The answer is obvious, there was no oral agreement ever made in Richmond or anywhere else. The activities of all of the Appellants-Plaintiffs and the claims made by several of the Appellants that since Mr. Perper had elected to build his motels that they were entitled to do the same thing, is not indicative of the existence of any binding agreement. These men wanted nothing further to do with Mr. Perper.

The lower Court did not exclude or fail to consider the testimony of Appellants concerning the alleged Richmond agreement. The Court pointed out that this was a very weak foundation on which to build the oral contract. The Court likewise called this to the attention of counsel during the course of the testimony of Appellant Deckelbaum. (JA 266) Appellants, after being advised of the Court's reaction, had ample opportunity to offer further testimony with respect to the alleged agreement but failed to do so. It was seemingly apparent to the Court, that there were many necessary elements of a contract which were lacking even on the basis of Appellants' testimony. No mention was made as to what constituted

the number of motels to be constructed and their size, the Metropolitan area of the District of Columbia, the term of the venture, the obligations and responsibilities of each person and what would happen if Holiday Inns refused to grant franchises.

Appellants cite portions of Wigmore on Evidence and McCormick on Evidence to the effect that opinions and conclusions of witnesses should be admitted into evidence as well as case law which the Appellants consider as holding to the same effect. However, the point here is not that Appellants' conclusions should have been admitted into evidence (since they were so admitted), but that of the weight to be given such evidence by the trier of the facts. Appellants cite absolutely no authority to the effect that conclusion or opinion evidence as to the matters in issue is to be given the same weight as other evidence.

It is clear that under prevailing case law, opinions or conclusions of lay witnesses as to the very fact in issue are to be either excluded from evidence or, of themselves, are not sufficient to support a verdict.

32 C.J.S. Evidence § 546 (13) states the general weight of case law on the subject as follows:

"A witness has been permitted to state facts relating to contracts, * * *. The mere fact that the witness cannot reproduce the exact words of a conversation from which a contract is claimed to have resulted does not forbid him to give any account of what was said, it being enough if he states the substance of it. * * *

"However, testimony giving conclusions and opinions as to matters in controversy should be excluded; and a witness may not state his mere conclusion as to the meaning of a conversation from which a contract is claimed to have resulted. Thus where it is a mere conclusion or opinion of the witness, he will not be permitted to state whether there was a contract; * * *."

And in *Kerr Gifford & Co. v. American Distilling Co.*, 95 P.2d 694, 35 Cal. App.2d 390 (Calif. 1939), the Pres-

ident of the defendant corporation was asked whether an answer filed by it was incorrect in alleging there was an express agreement at that time. The Court said:

"An objection was made that the question called for the conclusion of the witness. The trial court sustained the objection saying 'It is for the court to find as to whether or not there was an express agreement, under all the evidence in the case.' That ruling was clearly correct. * * *"

And see *In Re Leedom's Estate*, 261 N.W. 683, 684, 218 Wis. 534 (1935) and *In Re Cuhane's Estate*, 2 A.2d 567, 572, 573, 133 Pa. Super. 339 (1938), affirmed 5 A.2d 377, 334 Pa. 124.

B. No Oral General Partnership Agreement Existed Between Mr. Perper and Mr. Margolius.

Neither the answer of Appellant Margolius nor his cross-claim asserted any general partnership agreement. He asserted it of record for the first time at pre-trial in 1965. He contended that he was entitled to rely on both the oral agreement allegedly entered into in Richmond, as well as an earlier oral agreement which he said he had with Appellee Frank Perper since 1956 when the Charlotte, North Carolina Holiday Inn was constructed. Mr. Perper denied this and said he had invited Mr. Margolius to participate in motel deals, only on an individual basis and as attorney for the particular venture. His interest was a payment for legal service. When he referred to Mr. Margolius as a partner, he said he had reference to only a particular deal, he was never a general partner. Mr. Margolius claimed that Mr. Perper agreed to give him an interest in all additional motels that Mr. Perper might construct anywhere.

However, when he wrote to Mr. Perper on January 9, 1962 (JA 372-373), claiming for himself only a right to participate with Mr. Perper and his associates in motels which were being franchised in the "area", although he spoke of the Holiday Inn in Arlington, he said nothing with respect to the alleged Richmond agreement, or the claimed Charlotte agreement. Nor did he claim an in-

terest in the Winchester motel which had been franchised in 1959.

At the time, he and Mr. Deckelbaum were themselves actively engaged in the construction of several Holiday Inn motels which opened in Virginia in 1962, and altogether, after 1959 up to the time of trial, he and Mr. Deckelbaum had four Holiday Inn motels in Virginia, Ohio and in North Carolina, in which Mr. Perper was not invited to participate. The evidence further discloses that Mr. Perper and Mr. Margolius were not getting along with one another and came to the parting of the ways in 1959 in connection with a Durham, North Carolina motel; that Mr. Margolius was not invited by Mr. Perper to participate in the Winchester motel and stated that Mr. Perper had severed his relationship with him. Mr. Margolius and Mr. Deckelbaum took no steps to assert their cross-claim until 1963, more than a year after suit was filed by Appellants-Plaintiffs and in it did not mention the alleged Charlotte agreement.

Nor does Appellant Margolius contend that under the alleged general partnership agreement that he has a right to participate in any motels of Mr. Perper other than in the Metropolitan area of the District of Columbia. He simply asserts a claim to an interest in motels that might be constructed in this area. It is obvious why he takes this position. He and Mr. Deckelbaum have not invited Mr. Perper to participate in their motels. His position is, therefore, completely inconsistent and untenable.

The testimony of the parties, the exhibits, and the conduct of the parties all indicate that neither the alleged Richmond agreement nor the alleged Charlotte agreement were ever entered into. Only a single site joint venture agreement was entered into, and the Court's finding on these issues represented the great weight of the credible evidence.

II.

The Alleged Agreement, Even if It Existed, Was Terminated by Actions on the Part of the Appellants-Plaintiffs Themselves and Also by Actions on the Part of the Appellants, Margolius and Deckelbaum

The oral agreement relied upon by Appellants-Plaintiffs was allegedly entered into in Richmond, Virginia, in 1959. Appellant Deckelbaum also relies upon this agreement. Appellant Margolius relies both upon the agreement and an oral agreement that he claims was entered into between Mr. Perper and himself in 1956 or 1957.

Appellees have denied that any agreement ever existed except for the written joint venture agreement entered into with respect to the Shirley Highway motel and Appellee Frank Perper has denied any agreement entered into with Mr. Margolius in Charlotte, North Carolina in 1956. But, even if it is assumed, that one or both of these agreements had been entered into, there has been a termination and complete abandonment of said agreements by the Appellants.

Appellants-Plaintiffs and Appellant Margolius knew that Mr. Perper was building the Inn near the Shrine at Catholic University in 1961. If there had been any oral agreement to develop the Metropolitan area, the Appellants would have registered a complaint with Mr. Perper and failing in this, would have instituted action at that time. However, instead of doing this, the Appellant Weiss attempted to obtain a Holiday Inn franchise for downtown Washington as is reflected in the letter sent to him by Mr. Mann under date of March 9, 1961. And, thereafter, on July 3, 1961, Messrs. Weiss, Finkelstein, Shapiro (the lessee of Shirley Highway-Glebe Road Motel), Mr. Stolar and others applied for a Holiday Inn franchise on Baltimore-Washington Parkway in nearby Maryland. They made no contact with Appellee Frank Perper or the other Appellees inviting them to partici-

pate, nor did they invite Appellant Broidie to participate with them. Mr. Weiss said that since Mr. Perper did not tell him he was building the Shrine Motel that he felt he had a right to develop another Holiday Inn and that he had no obligation to take Mr. Perper into the project. (JA 222) Appellant Finkelstein testified that since Mr. Perper had elected to go on his own and find a site that "we" had equal rights to obtain a franchise or franchises from Holiday Inns. (JA 248) Several of Appellants also testified to the arguments that had taken place at the meetings which reflected the difficulties the parties had in getting along with one another.

Their actions at that time were a clear indication that if there had been any agreement they had terminated and abandoned the same. Mr. Weiss, as he testified at the trial, likewise had an interest in a Holiday Inn franchise in nearby Virginia. They put no money into the motels constructed by Mr. Perper nor did they furnish any services. And, the admission of Appellants-Plaintiffs in their second Pretrial Statement makes their actions doubly clear. They said:

"Although the plaintiffs at all times claimed a joint venture and the right of the joint venture to develop the area, when Frank M. Perper breached his fiduciary duty and started to take over the franchises in this area in the names of himself and his sons, the plaintiffs instead of immediately suing him, decided that if each one could develop his own site they would avoid the litigation which otherwise would follow, and they have now discovered that Frank M. Perper, except for his connection with Holiday Inns of America, was of no value to them and that apparently he is not a proper type of person."

And they proceeded to do just this.

As has also been pointed out, Mr. Margolius and Mr. Deckelbaum have four Holiday Inn franchises, all of which have been developed since 1959. No participation was offered to Mr. Perper with respect to these franchises, nor did they put money into or perform services

for the motels which Mr. Perper and others constructed. If, as Mr. Margolius has testified, the agreement with Mr. Perper was in effect when these franchises were secured, his action constituted a termination of the agreement and an abandonment thereof. He cannot insist that a general agreement was entered into at the time a motel was constructed in Charlotte, North Carolina in 1956 or 1957, seek to use it for just the Metropolitan area of the District of Columbia, and avoid its effect with respect to the motels Mr. Deckelbaum and he own in Virginia, Ohio and North Carolina. Mr. Margolius likewise conceded that his relationship with Mr. Perper had been severed and Mr. Perper told Mr. Wilson this on October 2, 1959.

However, in any event, it is clear under the law that a joint venture or partnership, which is not to continue for a specified period, may at any time be terminated. No particular form of notice or withdrawal is necessary; it being sufficient that unequivocal acts are brought to the knowledge of the other partners signifying the purpose. *Pawley v. Glasscock*, 34 S.W.2d 729 (Kentucky). In *Pawley*, the Appellant contended that since there was no definite time provided for a dissolution, it must be implied that it would continue so long as a telephone system was used for the purpose of communication since the venture in this case was to secure a one wire neighborhood telephone line. The Court said, however, that the partnership or arrangement was of that character which could be terminated at the will of the parties and pointed out that an abandonment of the enterprise has that effect. Here, Mr. Pawley disconnected his telephone and suit was instituted to compel him to continue the arrangement.

In *Upper Pennsneck Township v. Lower Pennsneck Township*, 89 A.2d 727, 20 N.J. Super. 280, the Court held that a contract of joint enterprise may be terminated by the will of any party to the contract where there is no time limit for the continuance of the enterprise, pointing out that no particular form or notice of

withdrawal is necessary, it being sufficient that unequivocal acts or circumstances brought to the attention of the parties will be sufficient. In this case, the two townships established a Municipal Court to be operated by both townships. Subsequently, one of the townships adopted an ordinance repealing the one establishing the Court. In holding that the agreement for the establishment of the Court could be terminated, the New Jersey Court said as follows:

"Moreover, such an intermunicipal agreement is in the nature of a joint enterprise entered into for the mutual benefit of the parties thereto. 'The term "joint enterprise" is * * * a single joint venture in which the parties thereto are associated together for the joint benefit of all,' 48 C.J.S., Joint Adventures, § 1, p. 803, and is a legal relationship distinct from any other relationship in law. In order to constitute a joint enterprise there must be an agreement to enter into an undertaking in the objects or purpose of which the parties to the agreement have a community of interest and a common purpose in its performance. It is well settled that a contract of joint enterprise may be terminated by the will of any party to the contract where there is no time limited for the continuance of the enterprise. 48 C.J.S., Joint Adventures, § 4, p. 819. 'Where the contract contemplates an enterprise that may continue over an indefinite period of time because of its continuous character, * * * and there is no time limited for the continuance of the enterprise, it is usually held that the contract is terminable at will by any party to it.' 48 C.J.S., Joint Adventures, § 4, p. 821. But a joint enterprise cannot be terminated by one or more of the parties to it without giving notice of the termination to the other party or parties, but no particular form of notice of withdrawal is necessary, it being sufficient that unequivocal acts or circumstances are brought to the knowledge of the other partners, signifying a purpose to terminate the arrangement. See *Pawley v. Glasscock*, 236 Ky. 821, 34 S.S. 2d 729; 48 C.J.S., Joint Adventures, § 4, p. 822."

In *Saletic v. Stamnes*, 321 P.2d 547, a recent State of Washington case, the parties who were commercial fish-

ermen, entered into a contract to pool all fish caught by them during a fishing season. After two weeks, Appellants abandoned the enterprise but then brought suit for an accounting for the two weeks preceding Appellant's own breach of the contract. In refusing to give the Appellant a recovery, the Court had this to say at page 549:

"Appellants did not offer to do equity in their complaint. It seems strange, indeed, that suitors, admitting their breach of a joint venture contract, should seek the aid of a court of equity to enforce rights claimed by them under the identical contract. No one may profit by his own wrong. It seems to us that by their own admitted misconduct appellants forfeited any rights to an accounting. We think the controlling rule of law under such circumstances was well stated in *Miller v. Rale*, 96 Mo. App. 427, 70 S.W. 258, 259:

'But a partner—especially one for a special purpose—may abandon the contract, and thereby forfeit his right to an equal share of the proceeds of the business. *Henry v. Bassett*, 75 Mo. 89; *Denver v. Roane*, 99 U.S. 355, 25 L.Ed. 476; *Appeal of Marsh*, 69 Pa. 30, 8 Am. Rep. 206, *Appeal of Zell*, 126 Pa. 329, 17 A. 647.

* * * * *

And see *Booth v. Wilson*, 339 S.W.2d 388, *Beck v. Cagle*, 115 P.2d 613, and *Middleton v. Newport*, 56 P.2d 508.

The alleged agreements relied upon by Appellants admittedly had no term for their duration. The agreements even if they existed, and they were consistently denied, could be terminated by each of the parties at any time. The conduct of the Appellants themselves, even without consideration of that of Appellee Frank Perper was not only a clear indication that the claimed agreements had not been entered into but also that any agreements between the parties had been terminated by their unequivocal actions.

III

The Appellants Were Guilty of Laches

The Appellants were guilty of laches and are, therefore, entitled to no relief for this reason alone, irrespective of the other issues.

The Appellants-Plaintiffs admittedly knew that Appellee Frank M. Perper in 1961 was building a motel at Catholic University. One of them also testified he knew of the motel at 17th and Rhode Island Avenue. The Appellants Margolius and Deckelbaum likewise knew of this fact and were, of course, building on their own. It was not until approximately eighteen months later before Appellants instituted this action, and in the case of the cross-claim, Appellants Margolius and Deckelbaum did not file their claim until November of 1963, still an additional year later. Equally important is the fact that three of Appellants-Plaintiffs and Appellants Margolius and Deckelbaum had gone into the other ventures referred to earlier in this brief completely on their own.

In the meantime, Appellees Frank Perper and Mrs. Sahm, Appellee Savage and his wife, Sol Snider and his wife, had assumed substantial obligations under a first deed of trust covering the Shrine motel constructed near the Catholic University. This trust agreement shows that \$950,000.00 was borrowed and that there is an obligation incurred by the persons interested in the Catholic University motel to pay this money. Mr. Rosenheim and the brother of Appellant Stolar had invested in other motels in the area, constructed by Mr. Perper and others. Appellant Stolar had likewise invested in the Holiday Inn at Rosslyn, Virginia.

As the lower Court said, "this is a case where the inaction of the plaintiffs, knowing that the defendant Perper was proceeding with other similar projects, constituted laches and the Court finds that the plaintiffs are guilty of laches." The Appellants with knowledge that Mr. Perper was constructing additional motels permitted him to change his position and prejudiced him as well as the other persons involved in the additional motels.

It is not the amount of time alone that makes Appellants guilty of laches, it is the fact that Appellants, with knowledge of what Mr. Perper was doing, failed to take action and let him change his position.

This Court in *Van Senden v. O'Brien*, 61 App. D.C. 137, 58 F.2d 689 said:

"No principle is better established than that a court of equity will not be active in granting relief in a case in which a party has slept upon his rights, and ordinarily in order to invoke the aid of the court, conscience, good faith, and reasonable diligence must be shown. * * * And in *Galliher v. Cadwell*, 145 U.S. 368, 12 S.Ct. 873, 36 L.Ed. 738, Mr. Justice Brewer said that the application of the rule did not depend so much upon the number of years which had elapsed as upon a number of other circumstances, by which he meant that while the principle itself is uniform, its application depends necessarily upon the facts in each particular case. And so it may be stated as a general principle that, where the person who seeks equitable relief has had ample opportunity of asserting his rights and claims, and abundant occasion to do so, and has failed to do either, the doctrine of laches is applicable. * * *"

Also, in *George v. Ford*, 36 App. D.C. 315, 333, the Court in discussing laches said as follows:

"If the situation of the parties has been materially changed during the delay, for example, if there has been a great rise in the value of the property involved, or the defendant has been influenced by the delay to make valuable improvements, * * *, then if it should appear that the plaintiff, with full knowledge of his rights, or the means of such knowledge at hand, has slept upon them, it would be inequitable, under such circumstances to entertain his suit."

There was in this case a material change of situation by Mr. Perper and others not parties to this litigation whose rights could be both prejudiced and effected by this litigation.

No good or sufficient reason is pleaded or shown here why Appellants waited to file suit. Mr. Margolius knew

of Catholic University in 1959, the others in 1960 or 1961. They preferred to seek franchises on their own and then later after Appellants Margolius and Deckelbaum had their own Holiday Inn Motels, and after Appellants had failed to get their own, and after Mr. Perper had commenced construction of several motels they filed suit.

IV

There Was No Breach of Trust

Counsel for the Appellants Margolius and Deckelbaum contends that Mr. Perper is guilty of a breach of trusts. First, he argues that a trust arises from the oral agreement allegedly entered into between Mr. Margolius and Mr. Perper at the time of the construction of the Holiday Inn at Charlotte, North Carolina. This has been fully discussed in other parts of this brief and as was pointed out, Mr. Perper denied the existence of the agreement. However, as has been pointed out, Appellants Margolius and Deckelbaum after 1959 and commencing in 1962 constructed four Holiday Inn Motels of their own in Virginia, Ohio and North Carolina. They did not offer Mr. Perper the opportunity to participate in said motels and as Mr. Margolius himself said, their relationship had been severed prior to that time. There is absolutely nothing in the record which establishes any duty on the part of Mr. Perper to include Mr. Margolius in any of his ventures. Each, Mr. Perper has testified, was the subject of an individual agreement, and he had no more obligation to include Mr. Margolius in any business transaction that he entered into than did Mr. Margolius to invite Mr. Perper into his own ventures.

While Appellants-Plaintiffs make no reference to a claimed breach of trust in their brief, they do adopt the brief of Appellants Margolius and Deckelbaum and therefore it is assumed that they are relying upon the argument made in that brief as to the additional alleged breach of trust.

Of course, if there was no oral agreement entered into in Richmond, there would be no basis for the claimed breach of trust as pointed out by the lower Court. The

lower Court found no agreement and therefore, there could be no breach of trust.

The franchise was taken in the name of Frank Perper, originally, with the knowledge of the parties and for the single motel at Shirley Highway-Glebe Road. This franchise, as testified to by the numerous witnesses from Holiday Inns of America, carried no commitment or understanding for any area. It did not assure the holder of the franchise that any additional franchises would be granted to him. Holiday Inns of America, through its employees, testified that the only protection that might be afforded the franchise and the Shirley Motel was against competition on the same roadway and within a few miles of the motel. Holiday was considering building its own motel at the time the franchise was granted, thereafter a franchise was granted to Mr. Krisch in Alexandria, and franchises were granted to Appellee Martin Perper whom, the testimony showed, was separate and distinct in his operations from that of his father, Mr. Frank Perper. Any additional franchises that might have been applied for by anyone who was in any way connected with the Shirley Motel would have required an additional and full license fee, no priority nor preferred consideration would be given to anyone and it would have been up to Holiday Inns to decide who was to receive any additional franchises. Nor did Mr. Perper prevent anyone from obtaining a franchise in the area.

Appellant Deckelbaum has said that Mr. Perper at one of the meetings of the joint venturers of Shirley Motel stated that he would take into future deals of his anyone who was interested, with the exception of Mr. Margolius. Mr. Rosenheim, a joint venturer at Shirley-Glebe, elected to participate in the Shrine Motel near Catholic University while Appellant Stolar and his brother, elected to invest a substantial amount of money in the Holiday Inn at Rosslyn. Robert Stolar was also a joint venturer at the Shirley Motel.

It will also be remembered that while the franchise for the Shirley Motel was originally taken in the name

of Mr. Perper, and while his name continued as one of the franchise holders, together with that of Appellee Harold Perper and Mr. Cohen after the change was made through the office of Mr. Deckelbaum, he was not one of the joint Venturers at Shirley Motel. Mr. Perper received no money from the Shirley Highway - Glebe Road venture, the interests of his son and stepson are their own, title to the property was taken in the names of Appellants Broidie and Weiss, and he has no financial or other interest in the Shirley Highway-Glebe Road venture. His status, as one of the three holders of the franchise, is simply that of a holder on behalf of the Shirley Motel joint venture, this one specific site. He holds nothing else.

Any obligation that Mr. Perper had by virtue of the franchise being in his name with respect to Shirley motel was carried out in the utmost good faith on his part. Although he was not obligated to do so, he performed many different services for the Shirley Motel joint venture.

The cases cited by Appellants as to this point are completely inapplicable to the factual situation involved herein.

In the case of a resulting or even in a constructive trust where a person has furnished the purchase price for property, or consents to the use of his money in purchasing property, and consents to a transfer of property by the vendor to another, or where a person's money is used without his consent by another in purchasing property or where a person's money, with his consent, is used by another in purchasing property, that person can compel a conveyance to him of the property so purchased. *Restatement of Trusts*, pages 1341-42.

None of these situations are involved here and Appellants are taking no action to remove Mr. Perper's name from the franchise. The Appellants are seeking to impress a trust, not on the Shirley Highway-Glebe Road venture, in which Mr. Perper claims no interest, they seek to participate in business ventures of his which are

completely unrelated to the Shirley Highway-Glebe Road joint venture, and in which they have invested neither money nor effort. There is no basis to their claim.

V.

The Findings of Fact Satisfactorily Resolved the Cross-Claim of Appellant Margolius

Only the Appellant Margolius attacks the sufficiency of the Court's Findings of Facts, contained in its Opinion, as applied to his cross-claim. This attack does not include the Appellant Deckelbaum who, together with Appellant Margolius, relies on the alleged Richmond oral argument.

As is pointed out in Rule 52 Federal Rules of Civil Procedure:

"(a) In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; * * *. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. * * * If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. * * *"

The cross-claim of Mr. Margolius was based upon not only the oral agreement alleged to have been entered into in Richmond but also upon another alleged oral agreement supposed to have been entered into by Mr. Margolius and Mr. Perper in 1956, beginning with the construction of a motel in Charlotte, North Carolina, under the terms of which Mr. Margolius claims he was entitled to have an interest in all motels that Mr. Perper built everywhere. As has been previously shown, Mr. Perper denied the existence of such an agreement and asserted that he had only been associated with Mr. Margolius on individual deals with a specific written agreement in each case. Mr. Margolius had received his in-

terest as a result of acting as attorney for Mr. Perper on the particular deal; he was never a partner.

The lower Court did find the facts specially so far as this portion of the cross-claim was concerned and in its opinion declared that Mr. Margolius had no general contract with Mr. Perper in connection with the construction of motels. (JA 45) And that previous to the Shirley Highway-Glebe Road transaction, Mr. Margolius always entered into an individual written contract with Mr. Perper for each motel.

The verdict and opinion of the Court was rendered on December 26, 1965. Thereafter, on January 14, 1966, the Judgment was entered by the lower Court. At no time, between verdict and Judgment, or thereafter, before this Appeal, did Appellant Margolius ever contend that the Court's Opinion did not sufficiently dispose of this portion of his cross-claim. He did not submit any additional requested Findings of Fact nor was any Motion for New Trial filed. This Appellant had ample opportunity to bring to the attention of the lower Court Judge his contention in this regard but this he failed to do.

This Court has, on numerous occasions, spoken with respect to the sufficiency of Findings of Fact. In *Klimkiewicz v. Westminster Deposit & Trust Co.*, 74 U.S. App. D.C. 333, 122 F.2d 957, 1941, the Court stated:

"(2, 3) Criticism is made of the District Court's findings of fact on the ground that they are mere statements of generalities or conclusions and do not meet the requirements of Rule 52 of the New Federal Rules; 28 U.S.C.A. following section 723c, but we think this criticism is not justifiable. The trial court is not required to make findings on all the facts presented and need only find such ultimate facts as are necessary to reach the decision in the case."

And in *Schilling*, supra, this Court pointed out the ultimate test as to the adequacy of findings was whether they were sufficiently comprehensive to provide a basis for decision.

Appellees submit that the Court's Opinion met the tests prescribed by this Court and adequately disposed of this portion of Mr. Margolius' cross-claim.

VI.

The Alleged Contracts Were in Violation of the Statute of Frauds

The Appellants-Plaintiffs contend that the Statute of Frauds does not apply although they point out that the Court did not pass on this point because it found it unnecessary to do so. Appellants do not mention what Statute they have reference to but they cite two District of Columbia cases and a case decided by the Tenth Circuit.

Appellants-Plaintiffs take the position that the oral agreement upon which they rely was entered into in Richmond, Virginia. However, they allege (JA 5) that the interest of Appellee Savage, stems from his being one of the original joint venturers, and Mr. Savage was not present at the time of the alleged Virginia agreement. He first learned of the possibility of building a motel on Shirley Highway at a meeting held in the District of Columbia following the Virginia meeting.

Following the meeting in Richmond, all but one of the meetings of the Shirley motel joint venturers took place in the District of Columbia, all documents and agreements were prepared by Appellant Deckelbaum in the District of Columbia, and the agreement of lease to Mr. Shapiro was prepared in the District of Columbia.

Appellant Margolius has relied upon two agreements, one allegedly entered into in Richmond and the other at the time of the construction of the Charlotte, North Carolina Inn. While his claim as to the existence of an oral general partnership agreement was, he said, entered into at the time of the construction of the Charlotte, North Carolina Holiday Inn, even on the basis of his testimony it was apparently entered into in the District of Columbia and not in North Carolina. He drew up the necessary papers in his law office in the District of

Columbia and Washington, D.C. appears to have been the base of operations between Mr. Perper and himself. Under his theory, his alleged oral agreement with Mr. Perper was to have continued for many years.

It is likewise true that Washington, D.C. seemed to be the base of operations for the Shirley Highway-Glebe Road venture and all activities in connection therewith, the motel having been leased to Mr. Shapiro. It should be borne in mind also that the alleged oral agreement supposedly entered into in Richmond involved the claimed Metropolitan area of the District of Columbia and that suit has been filed here.

If the District of Columbia law is to be applied to the alleged oral agreements, it is clear that under the provisions of the Statute of Frauds that any action here is barred by that statute. Pertinent parts of Title 12 Section 302 of the District of Columbia Code provide as follows:

"Actions to charge executors or others to answer for the debt or default of another.

"No action shall be brought whereby to charge * * *, or upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them or upon any agreement that is not to be performed within the space of one year from the making thereof, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, which need not state the consideration, and signed by the party to be charged therewith or some other person thereunto by him lawfully authorized."

And Title 11-2- Code of Virginia is similar to the District of Columbia Statute.

The Complaint itself establishes that this was an alleged agreement not to be performed "within the space of one year from the making thereof", and that it allegedly involved the obtaining of sites and building of motels. (JA 3) It, according to Appellants-Plaintiffs contemplated the location and obtaining of sites, franchises and the building of motels, obviously and neces-

sarily a long range, continuing proposition. The time required to secure the ground and rezoning for Shirley Highway-Glebe Road, and thereafter, to construct it, from April of 1959 until the summer or fall of 1960 is a clear indication that the alleged agreement could not have been carried out within one year and Mr. Deckelbaum's testimony bears this out. Nor do Appellants take issue with this. They simply claim the alleged Agreement was not within the statute.

Cases cited by Appellants-Plaintiffs do not seem to be applicable to the situation before the Court. The cases which seem pertinent are *Coan v. Orsinger*, 105 U.S. App. D.C. 201, 265 F.2d 575, *Warner v. Texas and Pacific Railway*, 164 U.S. 418 and *Street v. Maddux*, 24 F.2d 617, 58 App. D.C. 42. Also see 2 *Williston Contracts* Section 500.

Coan, supra, involved an oral agreement which was to continue until Appellant completed his studies in Georgetown Law School. Although it is clear that Appellant might be obliged to discontinue his studies and this would operate as a defeasance, thereby terminating the contract, it was one expected to continue for more than one year and, therefore, was held to be in violation of the Statute of Frauds.

This Court said at page 203:

"*Street v. Maddux*, Marshall, Moss & Mallory 1928, 58 App. D.C. 42, 24 F.2d 617, is authority for the proposition that a parol contract requiring three years for its performance is none the less a contract within the statute of frauds because it provides for annulment within a year, since annulment of a contract and its performance are distinctly different conceptions. There the owner of an apartment house in the District of Columbia sued on a verbal contract whereby he assigned the rents of that apartment to the defendant and authorized the defendant to pay itself a commission on the rents, in exchange for financial assistance required to prevent foreclosure. The agreement was to run for a period of three years unless the plaintiff sold the property during that period, in which event the agreement was to cease. Plain-

tiff sued because it was claimed that defendant failed to prevent the foreclosure. The defense was the statute of frauds.

"On appeal, this court affirmed a judgment for the defendant, holding that the statute barred recovery. We held that it was apparent from the parol contract that the parties did not contemplate its *performance* within a year after it was made, and that the fact that it should immediately cease and be of no effect if the plaintiff sold the property prior to the expiration of the year period contemplated *annulment* and not the *performance* of the contract.

"We therefore held that the annulment of a contract and its performance are distinctly different conceptions and that, although the parol contract in issue might be annulled within a year, it was none the less a contract the performance of which required three years. The court stated:

'In Warner v. Texas & Pacific Railway, 164 U.S. 418, 434, 17 S. Ct. 147, 153 (41 L. Ed. 495), upon which appellant relies, the correct rule was laid down for determining whether or not a parol contract was within the statute of frauds when the court said: "The question is not what the probable, or expected, or actual performance of the contract was; *but whether the contract, according to the reasonable interpretation of its terms, required that it should not be performed within the year.*" (Emphasis by this court)' 58 App. D.C. at page 44, 24 F.2d at page 619.

"The courts thus recognize a distinct difference between a contingency which fulfills the terms of a contract and one which prevents fulfillment. If the contingency which fulfills and completes the terms of the contract happens or could possibly happen within a year, the contract is not within the statute. On the other hand, if the contingency prevents or discharges the parties from performing their obligations under the contract within a year, then the contract is within the statute."

The lower Court would have been justified and could have found for the Appellees on this point alone without

reaching the other issues. However, as has been pointed out, the Court did not find it necessary to pass upon this issue.

CONCLUSION

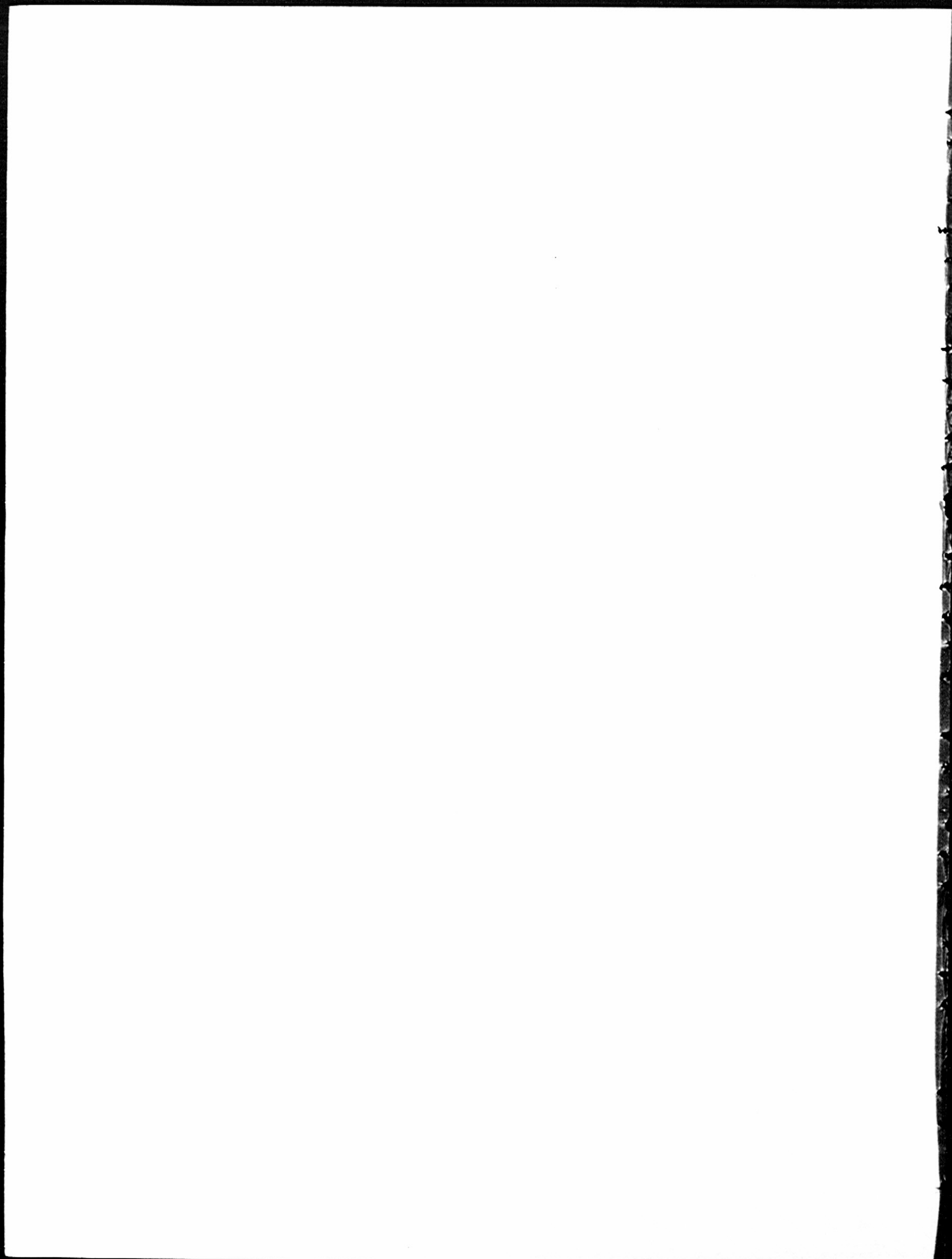
The trial Court carefully weighed the testimony, its findings were clearly supported by the evidence, the Statute of Frauds provides another basis for affirmance of the lower Court's decision and the Judgment should be affirmed.

Respectfully submitted,

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 20,073

ROBERT B. WEISS, et al.,

Appellants,

v.

FRANK M. PERPER, et al.,

Appellees.

NO. 20,074

United States Court of Appeals
for the District of Columbia Circuit

FILED MAR 7 1967

Nathan J. Paulson
CLERK

BERNARD MARGOLIUS

and

RALPH H. DECKELBAUM,

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v.

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PETITION FOR REHEARING
EITHER BEFORE THE ORIGINAL HEARING PANEL,
OR BEFORE THE COURT *EN BANC*

The appellants petition this Court to grant a rehearing, either before the original hearing panel or, preferably, before the Court *en banc*, and their basic reasons therefor are as follows:

1. That insufficient time was granted counsel for Appellants to present their arguments of the numerous problems involved. The Court is advised that the attorney representing the Appellants in No. 20,073 was limited to fifteen minutes, and that the attorney representing the Appellants in No. 20,074 was limited to fifteen minutes.

2. That the absence of an opinion in these appeals indicating the grounds for the decision prevents the Appellants from understanding the reason or reasons for the affirmance.

An opinion and an order are not the same, an opinion being the statement of the reasons upon which a judgment rests, and a court's decision of a case would be its judgment.—*Rogers v. Hill*, 77 Law Ed. 1385, 289 U.S. 582, 587.

It is conceded that the nature and extent of the opinion rendered by an appellate court is to a large degree discretionary with that court, but not in a case of this type involving the numerous problems as hereinafter set forth, with insufficient time within which to discuss them, making it apparent that the briefs were inadequate and that oral argument was necessary. As the Supreme Court of the United States has said, in *Federal Communications Commission v. Station WJR*, 93 Law Ed. 1353, 337 U.S. 265, at page 277:

"...we should not undertake...to generalize more broadly than the particular circumstances require upon when and under what circumstances procedural due process may require oral argument. That is not a matter, under our decisions, for broadside generalization and indiscriminate application. It is rather one for case-to-case determination, through which alone account may be taken of differences in the particular interests affected, circumstances involved, and procedures prescribed by Congress for dealing with them...."

Two learned Justices of the Supreme Court of the United States have commented on the necessity of an opinion. These comments appear in

Douglass & Mandeville v. M'Allister, 3 Cranch 298, 2 Law Ed. 445. This case was before the Supreme Court on error to the Circuit Court for the District of Columbia. Chief Justice Marshall said:

"The error complained of is, that the Circuit Court did not give an opinion on a point proposed. The Court was certainly bound to give an opinion, if required, upon any point relevant to the issue."

In the case of *Virginia Railway Co. v. United States*, 272 U.S. 658, 675; 71 Law Ed. 463, 472 — the Court said:

"Unless an opinion indicating the ground of the decision is delivered, a defeated party may often be unable to determine whether the case presents a question worthy of consideration by the appellate court. This is particularly true, where the case is in equity and the decree is entered upon a hearing involving complicated facts. For being in equity, matters of fact as well as of law are reviewable; and the reviewable issues of law are rarely sharply defined by requests for rulings. The failure to accompany the decree by an opinion may thus deprive litigants of the means of exercising a sound judgment on the propriety of an appeal. And the appellate court being without knowledge of the grounds of the decision below, is denied an important aid in the consideration of the case, and will ordinarily be subjected to much unnecessary labor."

Although the above quotation seems to refer to opinions in the original trial court, the sense of the Court is certainly clear.

See, also, *Schmeller v. United States*, 143 F.2d 544, 551; and *Cleveland etc. Railroad Co. v. United States*, 274 U.S. 404, 72 Law Ed. 338.

The reason why more time was needed for argument is that the rather casual rejection of Appellants' claims was apparently based upon the fact that the briefs did not clearly present the issues involved; and the lack of time to indicate the points and explain the same makes it ap-

parent — from our point of view — that Appellants should be permitted to reargue the case, with sufficient time within which to present the following points:

I

The Court below found that the issue to be determined by him was whether an oral agreement between the Appellants and the Appellees to enter into a joint venture to build, develop and operate or sell Holiday Inns in the Washington Metropolitan Area, had been made. The Court below had before it the testimony of Frank Perper and the testimony of Finkelstein, Weiss, Broidie, Stolar and Margolius, supported by the testimony of Deckelbaum. Perper denied that there was any mention or discussion of developing any additional Holiday Inns in the Washington Metropolitan Area beyond the one site in Arlington County, Virginia. All six of the other witnesses testified that such an agreement to develop the Metropolitan Area of Washington had been made.

The Court found (J.A. 47) that there was a discussion of the possibility of developing additional Holiday Inns in the Washington Metropolitan Area, if the project in Arlington County, Virginia got under way successfully; but the Court said that these were mere conversations that did not reach beyond the inchoate stage.

With the evidence therefore not in dispute, the question arose as to the Court's legal conclusion that the testimony of the Appellants consisted of incompetent conclusions. We would like to fully argue this point, in view of the absence of any opinion by this Court as to the correctness of the ruling of the Court below on this legal point.

II

The Court below, although originally under the impression that he was only going to decide whether the contract was made, ended up by determining that laches applied. That laches was not applicable is another point on which we feel full argument should be permitted.

III

The Court below additionally relied upon the following items, all of which should be fully presented to this Court in argument:

A: —

Did Margolius and Perper have an original joint venture agreement between them arising out of their long course of conduct in the developing of motels in the southeastern portion of the United States?

This problem should have been argued, because the Court below never made a finding on this — either as to fact or law; and it becomes important — not only to the Appellants in No. 20,074, but also to the other Appellants, because it was Margolius who would not go into the deal with the Appellants in No. 20,073 unless his "partner" was included.

B: —

The Court below found it of some significance that there was not a scrap of paper produced showing that such a contract or agreement existed between the parties. This is contrary to the facts, as there was a letter and there was the handwriting of Perper on the original franchise. This is a matter that should be fully argued before the Court.

C: —

The Court below also was impressed with the fact that there were written joint venture agreements for each of the motels; but it should be pointed out to the Court in argument that these were agreements between the promoters and the investors, and did not attempt to declare the rights as they existed between promoters for the development of the area.

D: —

The Court below thought it was of some importance that some of the Appellants had attempted to obtain franchises on their own after Perper breached the contract of joint venture; but the Court reached the conclusion that this showed no contract, whereas as a matter of fact it showed an attempt to minimize damages. This is another point that should be fully explored in argument.

E: —

The Court below ignored entirely the fact that the evidence — both oral and documentary — clearly showed that certain rights to develop the area flowed from the creation of the original Arlington County motel, which was admittedly a joint venture. The existence of these rights and the effect of the same should be fully argued.

F: —

The Court below said that the refusal to grant the franchises to the Appellants in No. 20,073 precipitated this suit. We desire to fully point out to the Court that this is a completely erroneous conception, both as to time and fact.

G: —

The Court below laid a great deal of stress upon the fact that the Appellants failed to contact Perper. The Appellants in No. 20,074 did contact Perper by letter, but the Court brushed this aside, saying that it was not an assertion of a legal right; and this fact should be fully argued, as it was in writing and clearly was an assertion of a legal right.

The Appellants, in No. 20,073, contacted the man they had dealt with — namely, Margolius — and, because Margolius had brought in his part-

ner, did not mean that these Appellants should have contacted Perper rather than Margolius. The Court's position on this point should be fully argued.

CONCLUSION

It is recognized, of course, that we cannot fully argue these points in a petition for rehearing, but we represent to the Court that this petition is presented in good faith and not for delay, as shown by the certificate attached hereto, and we earnestly submit this petition predicated upon the opinion, basically, that this Court's decision and the decision of the Court below were wrong and gave to the Appellees property rights that belonged to the Appellants, of some magnitude.

It may be that the appeal and the trial were ineptly handled by counsel for the Appellants, but we do not believe so. We think the error was the error of the Court below. We feel particularly unhappy with the casual nature of the affirmance, and to date none of our legal problems have been answered by this Court.

The decision of the trial Court was clearly erroneous, and it was based upon no evidence. If this had been a question of the amount of damages, then the Court could have selected any figure it wanted to in between the testimony adduced as to damages, but this is *not* such a question, and the Court cannot and should not have ignored the testimony on both sides and reached a conclusion different from such testimony. This the Court did, and it was in error.

Counsel was amazed when the Court allowed only twenty minutes to the Appellants in each of the appeals, but — being preadvised — attempted to argue those points believed to be of greatest importance, and arranged to spend only twenty minutes in such arguments. When the case was called the Court then announced that the time had been reduced from

twenty to fifteen minutes, and there was no time sufficient to readjust the briefs for argument, and necessarily the arguments were incomplete and rather ineffectual.

Respectfully submitted,

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CERTIFICATE

Arthur J. Hilland and Mark P. Friedlander certify to the Court that they have filed this petition for rehearing because they believe that a rehearing should be granted, and that it is not for the purpose of any delay and is presented in good faith.

Arthur J. Hilland

Mark P. Friedlander

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